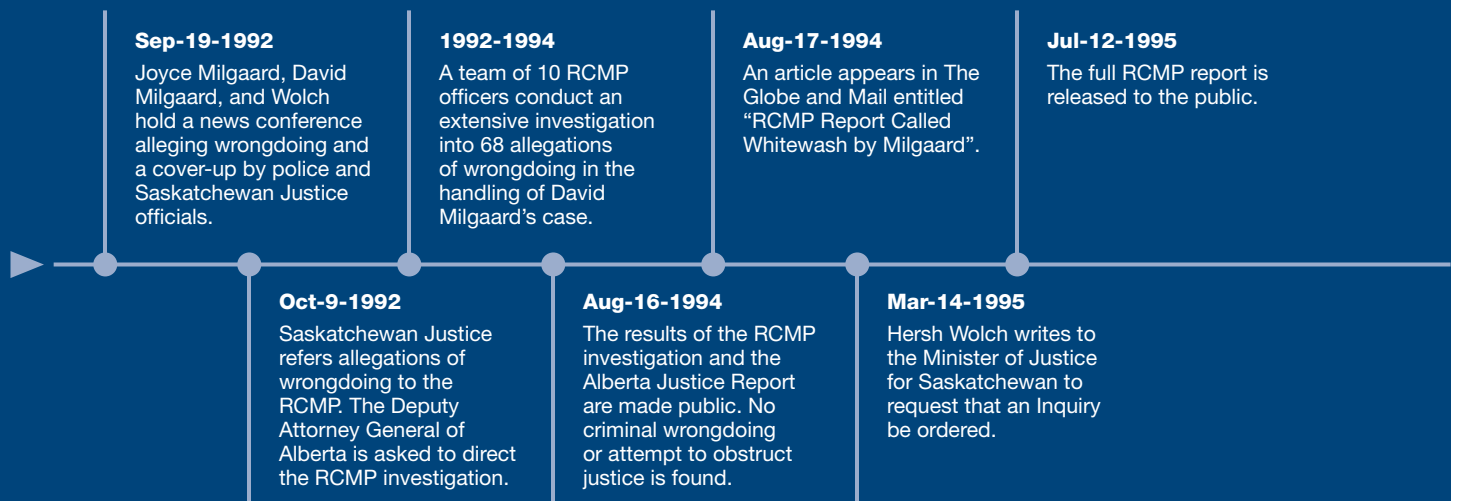


Chapter 17

RCMP Investigation – Flicker



The present chapter is not intended as a critique of the Flicker investigation conducted by the RCMP. Rather, I will consider, by reference to evidence heard at the Inquiry, whether the Flicker findings which came to the attention of police and Saskatchewan Justice should have caused authorities to reopen the investigation into the death of Gail Miller.

The Flicker investigation report produced by Murray Sawatsky of the RCMP is entitled “The RCMP Investigation into Allegations of Wrongdoing by the Saskatoon City Police and the Saskatchewan Department of the Attorney General (Saskatchewan Justice) in the Investigation and Prosecution of David Edgar Milgaard”. The document is long, and its inclusion in this report, even as an appendix item, would be impracticable. However, it appears in the electronic record for those who wish to access it.¹

1. Nature and Scope of Investigation

The Michael Breckenridge allegations and the publicity surrounding them had to be answered officially, improbable though they appeared. Accordingly, the RCMP was asked to conduct an investigation which they designated “Flicker”.

When this Inquiry opened, I remarked that the RCMP had already done a thorough investigation of much of what we were being asked to do again, and that their investigation had not satisfied the demand for a public inquiry because of perceived lack of independence. In my view, the Flicker report is, by any standard, a thorough, well written and scrupulously even-handed work, judging from first impression. The Commission elected not to accept it on its face, however, but to go over much of the same ground to satisfy the continued objections from the Milgaard group, particularly Joyce Milgaard, that the report was a whitewash. At the end of our work, I can say that no significant finding arising from the Flicker investigation into obstruction of justice and official misconduct has been called into question by this public Inquiry.

We heard about the Flicker investigation in detail from Sawatsky, now 57. He joined the force in 1969 and retired in 1998 as an Inspector. Now with Saskatchewan Justice, he commented in depth upon the work he led in Flicker and also provided valuable insights into criminal investigations.

Sawatsky was assigned to lead the criminal investigation into official wrongdoing arising from the Wolch letter of September 16, 1992,² and the ensuing press conference at which Hersh Wolch and Joyce Milgaard publicized the Breckenridge allegations. Alberta Justice became involved because Saskatchewan Justice and the police were implicated by the Milgaards.

Sawatsky had wide experience as a police officer and, following his retirement, became the director of the Saskatchewan Police Commission. At the time of his testimony at the Inquiry, he was the Executive Director of the Law Enforcement Branch for Saskatchewan Justice. While in police service, he gained extensive experience in homicide investigation, conducted around 600 polygraph examinations and, until becoming a commissioned officer, interviewed suspects on almost a daily basis.

Sawatsky had supervised a number of major team investigations. He was, in my view, a police officer of the first rank, who conducted a comprehensive and skilful investigation at significant public expense.

A huge undertaking grew out of the spurious Breckenridge complaint.³ (See Appendix Q, Chronology of Events). Sawatsky says that if Wolch had come to him directly instead of writing to the Minister of Justice and holding a press conference, he would have looked into the matter. Instead, Wolch's letter to the Minister of September 16, 1992 marked the start of a lengthy criminal investigation. Following the receipt of instructions on October 13, 1992⁴ to proceed with an investigation, efforts were made involving Wolch, Justice Canada and Saskatchewan Justice to set its parameters.⁵

Because of the extensive list of complaints presented by Wolch and Joyce Milgaard, the ambit of the Flicker Inquiry was extended beyond the substance of the Breckenridge allegations and moved extensively into the investigation and prosecution arising from the Miller murder. On November 9, 1992, the scope was widened to any misconduct.⁶

Joyce Milgaard and Wolch appeared in a number of television interviews on November 17, 1992. Joyce expressed the fear that the RCMP investigation was called to shut her up.⁷ Wolch commented that

2 Docid 004064.
3 Docid 060887 and 060842.
4 Docid 060893.
5 Docid 060903, 060842 at 844 and 852.
6 Docid 060842 at 853.
7 Docid 327715 at 716.

“clearly there was a cover-up”.⁸ He hoped it would be a wide investigation into potential wrong-doings by Crown and police.

Understandably, in view of past events, RCMP investigators were wary of what was said publicly, and had to be very discreet in their dealings with all parties. The Milgaards were expected to continue to attempt to influence the media for their own purposes.

Sawatsky stated his intention to look into every allegation, even the speculative ones. Given the time lapse, he expected documents to provide the best evidence. Five weeks were needed to organize documents received from Wolch, Saskatchewan Justice and the Saskatoon Police, as well as media articles and prison records. The investigative plan⁹ was to cover the period 1969 to the present. Anybody and anything related to the death of Gail Miller and to David Milgaard would be of interest. Findings of misconduct, short of criminal acts, would be referred to Alberta Justice – including, for example, unprofessional conduct and mistakes.

In total, the RCMP investigated 68 allegations and they involved, generally, the Police, the Crown and Caldwell. Sawatsky said that he received cooperation from both the Saskatoon Police and Saskatchewan Justice officials. They interviewed 236 witnesses,¹⁰ not including attempted contacts or merely incidental ones. Often 10 or 15 people would be interviewed on a given issue.

The Milgaard group alleged that there had been a cover-up and a guilty person had been allowed to go free. The allegations amounted to the offence of obstruction of justice, found in s. 139 of the *Criminal Code*. But additional allegations were so wide ranging that the investigators had to look at every circumstance relating to the Miller murder.

2. Allegations and Meetings with Complainants

Flicker was conducted as a criminal investigation with Joyce Milgaard and Wolch being the principal complainants.

On November 6, 1992, Wolch wrote to Sawatsky expressing the hope that his mandate would go beyond criminal acts to include lesser breaches of duty. Wolch’s view, as reported in the *Globe and Mail* on November 17, 1992, was that the allegations about Roy Romanow were only “one small piece of the puzzle”.¹¹ He suggested that, “They have to look at the actions of the Saskatoon police at the time and the actions of the Crown in disposing of the Fisher case.”¹²

Sawatsky and Eugene Williams met with Hersh Wolch, Greg Rodin and Robert Bruce, a Milgaard investigator, on November 26, 1992.¹³ Sawatsky was surprised to learn that Wolch did not think the Breckenridge allegations were important. Sawatsky’s memorandum of the six to seven hour meeting notes that Wolch’s concern was a cover-up of information which would have brought David Milgaard’s conviction into question. Wolch alleged that the cover-up had been perpetrated by the Saskatoon Police, the Saskatoon Crown office (Caldwell), and the Saskatchewan Attorney General’s Department (Kujawa).

8	Docid 327715 at 720.
9	Docid 067343.
10	Docid 338922.
11	Docid 327715 at 727.
12	Docid 327715 at 727.
13	Docid 060842 at 856.

Some of the many issues discussed with Wolch¹⁴ included:

- Cadrain as a major figure in the matter, and whether he was mentally ill at trial;
- Wolch’s theories about the Victim 12 connection which always involved Fisher attacking both victims. Much investigative time was spent on this;
- both criminal (per Joyce Milgaard) and ethical breaches (per Wolch) which were alleged against Tallis;
- the Ferris report showing that Milgaard was excluded as the perpetrator;
- Wolch’s allegation that Karst had admitted in the Supreme Court that he had lied. To my knowledge Karst did not say that. He admitted saying at first that he had not gone to Winnipeg but then admitted that he must have when the statements were shown to him;
- Wolch and Bruce maintaining, against all evidence to the contrary, that David Milgaard had not thrown the compact out of the car. In fact, Wolch and Bruce seemed determined to convince Sawatsky of wrongdoing by the authorities to spare him the trouble of investigating. It was not so much an information session as an exercise in advocacy; and
- Wolch’s accusations that Karst, Caldwell and Kujawa were obstructing justice.

In parting, Sawatsky asked Wolch if he could interview David Milgaard. Wolch said to go ahead but that it would be of no use. Perhaps David had done it. He knew many lawyers who believed in their clients’ innocence to the end only to find they were not. He also told Sawatsky to go ahead and test Miller’s panties for DNA. If it proved to be Milgaard’s, he would argue contamination. Sawatsky thought these comments were unusual. I accept his evidence, but I would not think it unusual for a seasoned criminal lawyer at this time to be so realistic. It tells me that Wolch’s vehement protestations of innocence up to that point were just advocacy.

Wolch suggested criminal conduct by Caldwell because he had called Albert Cadrain to testify when he was an obviously mentally ill witness. Bruce, the Milgaard agent also in attendance at the meeting, had a great deal to say, and was voluble in his criticism of authorities and Tallis. He asserted that police had passed off a paring knife as the murder weapon, and made the real weapon disappear. Perhaps the attacker broke the paring knife, then pulled out another and finished off the victim with it, in the course of which it flew out of his hand and landed on the fence where it was found a month later. He blamed Tallis and Caldwell for overlooking the second knife at trial, and Caldwell for failing to contact a witness, Schellenberg, who could establish that Cadrain was “out of his god damn gord,”¹⁵ or, in Wolch’s words, “completely off his tree”.¹⁶ Bruce’s contributions to the meeting were delivered in a stream of consciousness manner, culminating in the assertion that Governor General Ray Hnatyshyn had the first application for mercy, dismissed at the behest of his good friend Caldwell.

Twenty-nine areas of concern emerged from this meeting, but there would be 68 in all. Wolch promised full production of documents, including Centurion material, to assist the RCMP in their investigation.

A measure of the thoroughness with which the Flicker investigation was conducted may be seen in the fact that Sawatsky met with Joyce Milgaard for six hours and forty minutes, and with Wolch for five hours.¹⁷ The RCMP grouped the many allegations of the Milgaard group into 68 areas, and investigated each one. The allegations went far beyond Breckenridge. Wolch and Joyce Milgaard obviously gave a full

14 Docid 023046.
15 Docid 023046 at 138.
16 Docid 023046 at 138.
17 Docid 331214, 038239.

effort to demonstrate official wrongdoing. Included were allegations going to the conduct of the trial by Caldwell and Tallis. Joyce told the Inquiry that she thought that the two had colluded to put her son away. She also voiced her suspicions about Colin Thatcher as the murderer of Gail Miller.

3. Structure and Approach to Investigation

Due to the large number of allegations made, the scope of the investigation was broadened and the size of the team needed to deal with them was increased far beyond what was first thought reasonable.

The project file protocol¹⁸ reveals a technically sophisticated process. Hundreds of files were created, each one covering a task assigned by the project managers, officers Tost and Dosenberger. Some witnesses were repeatedly questioned.

Alberta Justice was chosen to report on the RCMP findings, and members of that ministry also served as resource persons for Flicker although they did no investigating themselves. Sawatsky reported to his RCMP superiors, but informal contact with Neil McCrank and Bruce Fraser of Alberta Justice continued throughout.

The 11 members of Sawatsky's team¹⁹ were chosen for their experience and ability. All members had more than 10 years service and were seasoned investigators, some with areas of expertise like Templeton in Internal Affairs, which suited him well when interviewing police officers and other officials. An effort was made to have all interviews done by two members so as to achieve a better product. At times there were four separate teams working, each composed of a corporal and a constable.

4. The Conviction of Milgaard and Fisher as a Suspect

(a) Milgaard

Sawatsky said that when they did their work from 1992 to 1994, the question of David Milgaard's innocence was not settled. The Supreme Court had not found him innocent and that influenced their thinking. Nor had they found Fisher guilty or even chargeable. Following Milgaard's conviction, he says, most police officers would feel that the matter was closed. He had received a fair trial. Incriminating evidence had come from his friends.

Sawatsky was aware of the Milgaard "impossibility theory" but investigators did not accept it. Sawatsky said that his advantage lay in being able to put things in perspective. He saw that the trial evidence was consistent with David Milgaard being able to commit the crime.

On the cosmetic bag issue, the investigators concluded that Wilson, John and Cadrain were not lying at trial when they said that David Milgaard threw one out of the car. Tallis' evidence confirmed it, and Milgaard's inability to give a reason for doing it was suspicious. Again, because the Milgaard group had put forward David's denial of throwing out the cosmetic case as evidence of his innocence, the fact that he did it would probably make investigators more convinced of his guilt. Although the investigation of the murder was not their prime focus, it involved much of the same evidence as the inquiry into wrongdoing, so they dealt with it in their report,²⁰ even exploring matters that were before the jury.

18 Docid 038450.
19 Docid 338551.
20 Docid 023167.

From John's evidence, the team concluded that David Milgaard, John and Wilson had been at the scene. The Milgaards argued that Wilson and David Milgaard were never separated, but Milgaard told Tallis that they had been.

John's evidence placed them in the vicinity of the murder, giving opportunity, and had David Milgaard throwing out the compact. This much was corroborated by other evidence, but her May 24, 1969, statement about seeing a stabbing could not be corroborated, and so was of limited value.

In terms of corroborated evidence in 1993, they had Milgaard's version of events, confirmed by Tallis and others, including the elevator break-in, a discussion of purse snatching, the need for money, David Milgaard with a flexible blade knife and being in the vicinity at material times, stopping a woman for directions in the vicinity at a relevant time, and then being stuck in the vicinity.

There was new evidence from Tallis that his client thought of robbing someone, indicating opportunity and motive. As well they had David Milgaard driving around the block where he could have disposed of the wallet which was found near Cadrain's; David Milgaard throwing out a cosmetic case found in the glove box; and finally, the motel re-enactment.

In terms of uncorroborated evidence, they had David Milgaard with blood on his clothes, John in her May 24, 1969, statement (which she later could not recall) seeing a stabbing, two admissions to Wilson, "I fixed her" (Saskatoon) and "I jabbed her with a knife" (Calgary), and David Milgaard throwing out the compact – recanted by Wilson but verified by others. This cast doubt on Wilson's recantation.

Comparing the evidence Sawatsky had in 1993 to what the jury had, the latter did not hear David Milgaard's words to his lawyer of being in the vicinity, talk of "rolling" someone, thinking of taking a purse, throwing out a compact and perhaps doing a re-enactment.

The jury did hear what Sawatsky heard from John and Cadrain, but not Wilson's recantation of admissions by Milgaard and of seeing blood. The investigators were in the same position as the jury on this point, if they disbelieved the recantation. In the result, in 1993, it was Sawatsky's view that David Milgaard was responsible for the crime.

I conclude that the Flicker investigators were getting information from witnesses which supported the conviction, rather than the reverse. Saskatchewan was privy to their findings and these would not have been information on the basis of which they should have reopened the investigation into the death of Gail Miller earlier than they did.

An example of the kind of information coming to investigators relative to Milgaard's claim of innocence was that obtained from Barbara Berard. Berard had been interviewed on May 22, 1969, by police, although she could not remember it, and told them that an upset John started to tell her what happened in Saskatoon, but did not complete her statement. To Flicker investigators, Berard recalled John being afraid that Hoppy (Milgaard) would kill her if she ever said anything. He had left the car to check out a house and when he came back "he was full of blood."²¹ John told her this after leaving a hostel where she had been dropped off. She spoke about it more than once. She said that Hoppy had warned her to stick to a story or he would kill her. John, she said, went to Cody Crutcher, a person who ran the hostel, and he advised her to say nothing to the police. She also said that Craig Melnyk told her about the motel re-enactment. To Sawatsky, this began to show a pattern of evidence incriminating Milgaard. That being

so, and for our purposes, it was not something which would have prompted Saskatchewan Justice to reopen the case.

RCMP could not verify a story from Ben Dozenko, a corrections officer, who claimed that Milgaard confessed to the murder. They relied upon Milgaard's Supreme Court testimony for his version of the facts, because he would not discuss them with Sawatsky.

They were inevitably conscious, as they worked, of the fact of Milgaard's conviction and that the Supreme Court said that he had a fair trial. This realization affected everyone in the justice system to some extent, I find, judging by the evidence of police officers and officials I have heard. It explains why police or Saskatchewan Crown officials felt no obligation to take a continuing interest in Milgaard's case up to the time his first application was filed. At that point, it was out of their hands until the Supreme Court handed down its opinion – one which did not include a finding of even probable innocence. This was noted and relied upon by police and the Crown, and it informed their decision to decline an inquiry or to consider compensation until 1997. I find no fault with that decision.

(b) Larry Fisher

Part X of the Flicker report deals with Fisher.²² The RCMP looked for evidence of Fisher's guilt or innocence but there was little record of his activities in 1968 and 1969. They gathered much the same information about him as they would have if asked to investigate him for murder.

Sawatsky had made extensive use in his police career of similar act profiles – a more subjective process as compared to the systems in place today. Then, even a finding of “very similar” was only a lead to follow in the search for more evidence. Today, with the Violent Crime Linkage Analysis System (VICLAS) it is possible to develop almost enough reason to charge based on similarity alone, and all municipal police forces in the province must use this system in major crime investigations. Still, similar fact evidence, without something more to link suspect to crime, does not suffice. Further, other evidence linking Fisher was more difficult to find in 1992 and 1993 than would have been the case in 1969.

The investigators looked at similarities provided by Fisher's address and Linda Fisher's statement but found only suspicion. Victim 12 did not supply a link, nor did the similar act analysis submitted by Ron MacKay.²³ In his opinion, the behaviour displayed in the seven Fisher attacks was consistent with the crimes being committed by the same offender. The behaviour displayed in the Victim 12 attack was not. The behaviour observed in the Miller murder was also inconsistent with Fisher's behaviour in the 1968 to 1970 period, so he was not a likely suspect.

Summing up the evidence against Fisher, Sawatsky said that they had his other assaults, the information from Linda Fisher, and a jail house informant. Throughout the investigation they were suspicious of him, but lacked reasonable and probable grounds to charge him. The DNA changed that, but in Sawatsky's view, the similar fact evidence did not. He still sees a lack of similarities, and points out that only three of seven crimes were allowed at Fisher's trial for the rape and murder of Gail Miller as similar fact evidence.

Sawatsky testified that he would not expect the rape confessions of Fisher to have had much profile in the Saskatoon Police department. Because of the guilty pleas, nobody was called to testify. Officers are busy with current cases and such dispositions of cases did not get back to investigators in those days, so it is

22 Docid 023167 at 379 and following.
23 Docid 023167 at 494.

not surprising that the four investigators here were not told. It is different today, he says, as is the practice of informing the victims. In 1970, the investigators did not know of the dispositions, so they could not tell the victims.

Sawatsky remarked that although Fisher of 334 Avenue O South had been checked on a routine canvass, and a month later a complaint was filed by Albert Cadrain of the same address, only hindsight would tell you that a connection should have been made.

The Commission received more than 50 boxes of material from the RCMP. Sawatsky told us that he read all of the reports of his team, but not all of the material received by the Commission. The RCMP report of the Flicker Investigation speaks for itself, but it would be useful here to relay a few examples of issues they considered.

5. Significant Issues and Witnesses

Investigators simply did not know in 1993 what had happened at the murder scene. They had no evidence to doubt the results at trial, on appeal, or at the Supreme Court. John, Wilson and Milgaard could have helped, but did not, so the investigators were never able to settle on one scenario.

The first step was to try to test the veracity of the first statements. Witnesses on the fringe of an event commonly add things over time, after having first denied. Wilson, for example, at first left out information including the group having stopped a woman for directions and David Milgaard having left the car when it was stuck. But this information appeared in his May statements. Investigators knew these things to be true because David Milgaard had related them to his lawyer. This allowed the investigators to conclude that Wilson's first statement was not the whole story; and that the inclusion in the May statement was either not the product of intimidation, or if it was, it produced the truth. In contrast, Wilson recanted his May statement that he saw blood on David Milgaard, and that the latter admitted stabbing a girl. Here, Sawatsky had no independent means of corroborating the truth of the May 24th statement.

Speaking of investigative methods in general, Sawatsky commented that both the seriousness of the crime investigated and the reluctance of the witness might require more aggressive treatment. It is acceptable to confront a witness by what another has said. During a polygraph exam it is proper to confront and question a witness in the face of a deceptive answer to a question such as, "Do you know anything about the murder?" Both the age and sophistication of the witness matter.

Sawatsky pointed out that witnesses sometimes lie at trial for reasons other than police influence – and they rarely tell police everything in the first interview. So the fact that Wilson and John's incriminating evidence came later did not in itself cause him to suspect police misconduct.

Sawatsky says that their task of assessing credibility was made more difficult by Paul Henderson and Joyce Milgaard having bothered people in places where they did not wish to be spoken to, and having used prolonged and suggestive questioning like "don't you think he has been in jail long enough?" thereby inviting the witness to say he was innocent.

The RCMP approached witnesses in an open and non-suggestive manner and tried to find other facts to support their statements. The voluntariness of statements had to be tested, so they had to be alert for evidence of promises, inducements or coercion. Any taped record was valuable. The longer in time from the event, the more susceptible to influence a witness would be. Sawatsky had some tapes of Joyce Milgaard's interviews from the early 1980s. In one, she suggested to Ron Wilson that reward money was available. She also suggested to John that she might have seen another man do the killing.

Telling witnesses that Fisher had done it could cause witnesses to doubt their testimony. Strong witnesses might maintain their stories, while weaker ones might lose confidence. It is difficult to distinguish what a witness saw from what he heard was seen.

The investigator must test a statement against known facts, and go back for clarification. You ask them to tell what they recall, and then show them documents which might assist.

(a) Calvin Tallis

Tallis became one of the objects of the Flicker investigation into allegations of criminal behaviour, and had to be warned as such. He cooperated fully with the RCMP while describing the allegations against him as nonsense, one being that he had conspired with Caldwell to have his client convicted. While describing the accusation as absurd, Tallis nevertheless offered to answer any questions, and he did so in an open and forthright manner. Sawatsky said that throughout his investigation, he heard many complimentary things about the professionalism of Caldwell and Tallis. In contrast, Joyce Milgaard had told him that Tallis was incompetent and should have put her son on the stand. Putting forward such suggestions not only failed to show innocence, said Sawatsky, they tended to reinforce belief in guilt.

(b) Eddie Karst

Karst's trip to Winnipeg to take Fisher's statements is covered in the Flicker report.²⁴ As noted, Karst at first could not remember going to Winnipeg, and had to be reminded by reference to the statements he took. Karst's lack of memory on this point has persisted to this day, really without explanation except for the passage of time which is, of course, significant. He was challenged about this in cross-examination at the Inquiry to no avail. Although Sawatsky's report describes the issue clearly, it offers no explanation or finding as to Karst's credibility.

The issue relates to the missing files, the allegation being that Karst was dispatched to Winnipeg to take Fisher's statements and return them to Saskatchewan to be dealt with in secret. Then the Saskatoon Police files would be destroyed to remove evidence of Fisher's rapes in Saskatoon, preventing discovery of Fisher, the rapist, as murderer. Nordstrum of Morality went with Karst and, I should think, would have been part of the scheme, if one existed.

For Sawatsky, not the least of the arguments against concluding that a conspiracy to cover-up evidence had taken place is that a leak would be almost inevitable. However, he saw no evidence of one.

As a seasoned officer, Sawatsky was qualified to comment on Karst's inability to recall his trip to Winnipeg for the interview of Fisher. Twenty years had passed and so had a huge number of interviews. Karst had often been sent out of town to do such work. It is unremarkable, says Sawatsky, that he would not remember this one. And, he notes, that when confronted with the record, Karst did not try to hide it.

(c) Linda Fisher

Linda Fisher told Flicker investigators that Saskatoon Police had spoken to her shortly after the murder while doing door-to-door inquiries. She did not mention her argument with Larry to them because she and Larry argued all the time. But 10 years later, in the middle of the night, after drinking, she attended the Saskatoon Police station and gave her story, describing a knife which was unlike the murder weapon.

Because Linda Fisher twice changed her description of her missing knife, and added a second missing knife – a bone handled hunting knife – investigators did not consider it strong evidence.²⁵

I agree with Sawatsky's finding that the reason that the Saskatoon Police did not follow up on Linda Fisher's report was not part of a cover-up, but more likely indifference. I would add that the information was perhaps only quickly considered bearing in mind the circumstances under which the statement was given. The lack of action reflects a mind set of police about decided cases. Once all appeals are finished, the case is out of mind and on they go to new matters. I do not fault them for this general attitude. Few have the capacity or the need to keep old files in their conscious memory.

However, to the extent possible, a systemic means should be found to ensure that complaints about concluded matters receive appropriate attention. In direct answer to the question posed by our terms of reference, the Linda Fisher complaint did not receive the attention it deserved. The investigation should have been reopened in 1980 at least to the extent of questioning Fisher and verifying his movements on January 31, 1969. Some have argued that nothing would have been gained by talking to him, but that is a rationalization. If the complaint on its face was not frivolous, and this one was not, it deserved follow-up.

(d) Media

Some media coverage was not factual and might have affected memories. Innocent conversations can distort memories. Nevertheless, the RCMP investigators contacted members of the media who were said to have something to offer. Sawatsky confirmed that had he found any evidence supporting a criminal charge, he would have referred it to Alberta Justice.

(e) Ron Wilson

In probing the genuineness of Wilson's recantation, Sawatsky explained that investigators would look for things Wilson had told Roberts which were subject to verification. If Roberts had meant to coerce Wilson into saying something which was not true, he would not choose a statement of fact which could be verified. An example would be Wilson telling him that John in Calgary said that Milgaard admitted jabbing a girl with a knife. That statement could be verified by checking with John.

As well, Wilson being told by Melnyk and Lapchuk about the motel re-enactment tends to negate police coercion on that score.

When Wilson was interviewed by Joyce Milgaard in 1981/82 he made no complaint of intimidation. Why did he wait to tell Paul Henderson? A further factor to be considered was that Wilson could have received a reward from Joyce Milgaard to recant in 1981 but did not do so.

The investigators concluded that the police in 1969 had reason to believe that Wilson and John were not telling the whole truth in their first statements. Fear of Milgaard could have been the reason.

They would have expected Wilson to eagerly await his chance to speak to them further to his recantation. But he proved to be uncooperative. Further, the form of his statement to Henderson plus the fact that he recanted some factually true matters made the RCMP suspicious. They wanted to give him a chance to explain and clarify, but he would not cooperate, nor would Henderson, so they were left with a suspicious recantation. When a recanting witness lies about one element in a statement, he throws the rest of the statement into doubt.

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Docid 023167 at 328.

On the Saskatoon Police cover-up allegation, the RCMP looked into the single perpetrator theory. Sawatsky said the police would have been grasping for leads, examining unsolved sex crimes with a similar method of operation. They might get a lead on the murder which was unrelated to other crimes. Often theories turn out to be wrong. So when Cadrain entered the picture, investigators probably concluded that the rapist of other women was not connected to the murder. Sawatsky saw nothing wrong with this.

(f) Colin Thatcher

The RCMP investigated Joyce Milgaard's suspicion that Thatcher murdered Gail Miller, however, they could establish no link between Thatcher and Miller.

(g) Paul Henderson

RCMP investigators felt that Henderson had exercised undue influence in his witness interviews and this reflected badly on all information produced for the Milgaard group by Centurion Ministries. Their object was to get witnesses to agree that David Milgaard was innocent and Fisher was guilty.

Sawatsky regarded the very long Henderson interview of Wilson, followed by a very short statement written by Henderson, as improper and, although the tape could have settled the issue, he asked for but never received it.

Henderson, says Sawatsky, did not cooperate in providing tapes and other materials – again no surprise. He failed to do so for Williams and for us, as well. It is unnecessary for me to draw the inference that he had something to hide in not producing the tapes of the Wilson recantation, because I find from other evidence that the recantation is unreliable.

(h) Nichol John

Of interest are the statements of John's parents²⁶ taken by the RCMP in 1993. Apart from their description of an importunate Henderson, which is of interest in evaluating Henderson's methods, Mary John told the officers that her daughter had described witnessing the stabbing of Gail Miller by a man, and that "... she was just one scared girl".²⁷ Later in the interview she recounted that her daughter was still expressing fear of David Milgaard in 1993.²⁸ The reader is again reminded that the truth of what John is said to have reported to Berard and to her parents is not in issue, but rather the fact that what she said came to the attention of police and Saskatchewan Justice officials, and could have had a bearing upon their decision not to reopen the case earlier.

(i) David Milgaard

Sawatsky had several interviews with David Milgaard but simply could not get him to focus on questions.

(j) Victim 12

Wolch saw the Victim 12 assault as related, but she was very sure of her time – 7:07 a.m. – and that made it unlikely that Fisher could have committed both attacks. Investigators traced the route both on foot and in vehicle. It did not fit. If Victim 12 was attacked by Fisher, he could have an alibi for the murder.

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27
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Docid 064788.
Docid 064788 at 805.
Docid 064788 at 816.

(k) Albert Cadrain

Cpl. Jim Templeton interviewed Cadrain, who again said that he had seen blood on Milgaard’s pants, adding this time that Milgaard had put his soiled clothes in a bag and then ran out barefooted to the garbage truck with them.²⁹ Cadrain confirmed his March 2, 1969, statement, saying that it was true at the time he gave it. He said that the police did not try to make him say untrue things. They did not trick him, but just tried to get the truth. He was not on drugs at the time. His long narrative, although greatly embellished in comparison with his 1969 statement, did not vary in its essentials.

Cadrain said that before both the preliminary hearing and the trial, officers Eddie Karst and Charles Short told him not to say a word of a lie, and so he told the truth at the trial. He also claimed that Karst came to see him saying that Fisher had been caught raping someone and that “they” (presumably the Milgaards) were going to try to get him to change his statement but he should not do so, because the police had gotten the right person. He did not tell him, however, not to speak to Mrs. Milgaard.

Cadrain told Templeton if anyone was trying to get him to change his story, it was Henderson, not the police. So just to get Milgaard off, “I changed the bloody thing. He had done his time”. Cadrain added, “I gave him what he wanted to hear just to get him off my ass, for one thing. And so he could write a bullshit book³⁰... I wasn’t in court there, so I didn’t give a shit. I wasn’t under oath”.³¹

When referred to the statement given to Henderson on June 24, 1990,³² by the RCMP, Cadrain adopted the first two pages, but rejected the words on the third page which said they “pushed me over the edge and I cracked”.³³ In Cadrain’s own words, “that’s bullshit”.³⁴

RCMP investigators report that Cadrain told them, “...that when interviewed by...Henderson, he told him that he may not have seen blood on Milgaard’s clothes. This was because Cadrain felt pressured by Henderson and his brother Dennis who urged him to sign a statement using words to the effect that he (Milgaard) had “...done his time, let him go.”³⁵ Cadrain maintained that, in fact, he did see blood, and that if he told Henderson otherwise it was “to fuck him up”.³⁶ Sawatsky says that the investigators believed Cadrain.

Cadrain told investigators that his testimony in the Supreme Court of Canada was true, but that Henderson and his brother Dennis pressured him to say that he didn’t see blood. He said that he would not have signed the statement of June 24, 1990, without the influence of his brother Dennis.

In Sawatsky’s view, the Saskatoon Police used aggressive questioning, not amounting to misconduct, to get the truth from Cadrain because they apparently did not believe him at first. Had they intimidated him to get the first statement, why would they keep it up? And Karst, of course, disputed Cadrain’s version of the repeated visits. They happened, he said, but because Cadrain kept coming to them. I accept that, and I also accept that the police aggressively tested the truth of Cadrain’s first statement.

29	Docid 326611 and 326707.
30	Docid 021935 at 2013.
31	Docid 021935 at 2014.
32	Docid 000229.
33	Docid 021935 at 2018.
34	Docid 021935 at 2018.
35	Docid 021935 at 2008.
36	Docid 023167 at 235.

Sawatsky says that he found no evidence to support the statement in the Carl Karp and Cecil Rosner book that the Saskatoon Police asked Regina Police to question Cadrain after hearing that the teenagers had left Saskatoon for points west. The only evidence of Regina Police questioning came from Cadrain himself.

(I) DNA

Given the history, the RCMP expected to be criticized in the press upon release of the report, but were still prepared to go the extra mile by recommending DNA testing on the panties.³⁷

When DNA testing was taking place in the United Kingdom in 1997, Sawatsky wrote a briefing note to his superiors³⁸ in anticipation of results being announced. It demonstrates insight into the possible conclusions to be drawn from the test results. He stated that the investigators “have never maintained that the stain in Gail Miller’s panties came from the killer”.³⁹ There were other possibilities. The RCMP would have regarded a finding that it was Milgaard’s DNA as linking him conclusively to the murder. But Wolch would not and he would have argued exhibit contamination or tampering. But if it were found that the DNA present was not Milgaard’s, Sawatsky explained, this would not exonerate him. He could still be the killer. By extension, the same reasoning would apply to semen stains found on other garments.

Sawatsky kept his file open. It appeared that Fainstein of Justice Canada had assumed carriage of the matter in consultation with Milgaard counsel and the RCMP DNA unit in Ottawa.

6. Conclusions of Report

Professional investigation and prosecution teams from the RCMP and Alberta Justice worked on the matter for almost two years. At the conclusion of their work, Bruce Fraser and Neil McCrank reported to Saskatchewan Justice, releasing their report on August 16, 1994.⁴⁰ This document gives a concise history of the RCMP investigation and the Alberta Justice recommendations on charging.

The first RCMP report to Alberta Justice was sent February 23, 1994.⁴¹ DNA matters and a profiling of Fisher offences to compare to the Miller murder were to be covered in a supplemental report. The full report is dated January, 1994.⁴²

The supplementary and concluding RCMP reports were sent to McCrank of Alberta Justice on July 21, 1994.⁴³

The RCMP found no criminal acts and no misconduct. They had found no new evidence showing David Milgaard to be innocent, or reason to pursue an investigation against anyone else, including Fisher. The RCMP reported, “There is no new evidence which would exonerate David Milgaard, or that would inculpate any other person, including Larry Fisher.”⁴⁴

37	Docid 061941 at 944.
38	Docid 036217.
39	Docid 036217 at 219.
40	Docid 032797.
41	Docid 061490.
42	Docid 023167.
43	Docid 033694, 061567.
44	Docid 032805 at 821.

(a) Alberta Justice

The RCMP report had dealt with 68 allegations against the Saskatoon Police, Caldwell and Kujawa, and other members of Saskatchewan Justice, including Attorney General, Roy Romanow. The Alberta Justice Report reviewed only the main allegations, but unanimously endorsed the RCMP conclusions on each of the 68 allegations.

Only one possible offence could have been suggested, that being an attempt to obstruct justice under s. 139 of the *Criminal Code*. The Report states:

The evidence must support that an individual specifically intended to defeat the cause of justice and committed an act which had a tendency to hinder the proper judicial disposition of the proceedings in *R. v. Milgaard*.⁴⁵

The Report concluded that Saskatoon Police did a thorough investigation; that the Michael Breckenridge allegations were totally baseless; and that no connection had been made between the rapes and the murder by Kujawa or anybody in Saskatchewan Justice.

7. Publication of Reports and Reaction of Milgaard Group

As the Flicker investigation neared completion in 1994,⁴⁶ Sawatsky sought clarification on issues raised by Bruce and Wolch.⁴⁷

The first draft of the report was done by January 13, 1994. DNA testing was discussed.⁴⁸ They hoped to have preliminary test results before release of the report, but they would need to be validated. On January 21, 1994, Wolch wrote⁴⁹ to Sawatsky asking to see the RCMP report before it was issued, to discuss its contents and let them have his views. He noted that this approach would be preferable to having to proceed with the intervention of a Prime Minister, the public, and the press, as had been the case with the first s. 690 application. Sawatsky saw this as a threat but he was not impressed. The RCMP never share evidence or opinions with complainants in a criminal investigation. DNA results were to be disclosed to the Saskatchewan Attorney General.⁵⁰ Further, McCrank suspected a set-up by Wolch. If the report were unfavorable to him he would use the time to prepare an attack and regenerate the controversy.

The release of the Flicker and Alberta Justice reports in 1995 was welcomed by Saskatchewan but met with derision from the Milgaard group. We heard from Joyce Milgaard, Murray Sawatsky and Murray Brown on the point.

For Saskatchewan Justice, Brown told us that had the RCMP and Alberta Justice recommended reopening they would have followed the advice. But in the result, the media blitz and the Milgaard effort had accomplished nothing. David Milgaard's status remained as it was after the opinion of the Supreme Court.

45	Docid 032805 at 809.
46	Docid 023167.
47	Docid 061401.
48	Docid 061421.
49	Docid 061704.
50	Docid 061430.

On August 17, 1994, the Regina Leader-Post reported the result of the 16 month police investigation and seven month analysis by Alberta Justice. It said, “Hersh Wolch...said he’d never met Breckenridge or put much stock in his story, but he’d hoped his allegations might have opened the door for a public inquiry”.⁵¹ Given Wolch’s participation in the news conference, this statement is difficult to understand.

Joyce Milgaard is quoted in the Regina Leader-Post saying, “The RCMP were going out trying to justify the conviction. They were not going out trying to find the truth”.⁵² She complained that her group had had no input, ignoring the fact that this was a criminal investigation where a complainant is simply a witness, not an investigator. Without reading the RCMP report, she called it a “whitewash”.⁵³ She said that if she had had the information which the police and Caldwell and Kujawa had in 1970, she would have made the connection, so why didn’t they? They must have made the connection, but suppressed it. And the investigators, themselves police officers, found no wrongdoing, so they, in turn, were involved in something nefarious.

On August 17, 1994, Dave Roberts reported in the Globe and Mail⁵⁴ that, “Mr. Milgaard and his lawyers dismissed the findings as a ‘complete and utter whitewash’ of what they insist is a continuing coverup”,⁵⁵ and that Milgaard said that the RCMP had not interviewed him. In fact, said Sawatsky, they went to him twice.

Sawatsky had recommended a meeting with Wolch before public release of the reports,⁵⁶ explaining that in the usual case the RCMP report their findings to a complainant before making them public. This does not mean they provide their investigation reports. But here, Alberta and Saskatchewan Justice told them not to report to Wolch before releasing reports to the public lest he say what he liked about the facts before the public had a chance to judge for themselves.⁵⁷ It is apparent to me that the Milgaard group’s predilection for publicity had engendered a deep distrust. Sawatsky says that a decision was made to meet with Wolch⁵⁸ but reversed a number of times until the final one was made not to meet in advance of the release of the report by the Minister. However, they planned to meet him early in 1995 to discuss the report.⁵⁹ DNA testing would be discussed as well.

On April 27, 1995, Wolch wrote to the Saskatchewan Minister of Justice⁶⁰ asking for a public inquiry. The RCMP investigation, he said, was “clearly not an inquiry”.⁶¹ He further stated that the RCMP agreed to meet him to disclose what information had been gathered and to have some input. Sawatsky says that he did not commit to do these things. I accept that.

51	Docid 147961.
52	Docid 147961 at 963.
53	Docid 147954.
54	Docid 217219.
55	Docid 217219.
56	Docid 061616.
57	Docid 061708.
58	Docid 061664.
59	Docid 238801.
60	Docid 033291.
61	Docid 033291.

On July 4, 1995, Sawatsky wrote to Wolch indicating that he would meet him to outline the findings,⁶² but Wolch declined to meet on the date suggested,⁶³ and suggested that the government was interested only in putting its “spin”⁶⁴ on the report.

At the Inquiry, Brown commented that Wolch continued to lobby the Saskatchewan Minister of Justice (the latest one) for a public inquiry,⁶⁵ still alleging a miscarriage of justice (as found by the Supreme Court of Canada, he said) and wrongdoing by police and prosecutors (where Flicker had found none). His latest try was unsuccessful.⁶⁶ The Attorney General thought that three inquiries was enough.

Alberta Justice concluded that there was no credible evidence to support any allegation that:

- the Saskatoon Police or any member;
- Caldwell;
- Kujawa;
- any member of Saskatchewan Justice including Attorney General Romanow; or
- anyone involved in the prosecution or investigation,

attempted to obstruct justice in any way or were involved in any criminal wrongdoing. Sawatsky says that the Alberta Justice report⁶⁷ was consistent with the material they provided.

Asked at the Inquiry why she did not bother to find out what the report said, Joyce Milgaard replied “If you didn’t believe the paper it was written on type of thing in your thinking, why would you go through it?”⁶⁸

8. Conclusions

On August 15, 1994, Alberta Justice published a report on its inquiry into allegations of criminal wrongdoing against the Saskatoon Police and Saskatchewan Justice.⁶⁹ It concerned “The David Milgaard Investigation and/or Prosecution” – ground that we have gone over again in minute detail.

Alberta Justice could find no validity to these accusations as a basis for an attempt to obstruct justice. Milgaard counsel put that very question back in issue in this Inquiry. I have nothing to add to the findings of Alberta Justice when they said they found “... no credible evidence to support the allegation the Saskatoon City Police intimidated or coerced witnesses into giving untruthful evidence to implicate Milgaard in the murder...”.⁷⁰

In my view, the Flicker investigation and report, together with the Alberta Justice report, did not provide information coming to the attention of the police or Saskatchewan Justice which should have caused them to reopen the investigation into the death of Gail Miller.

62	Docid 061884.
63	Docid 061886.
64	Docid 061886 at 887.
65	Docid 033297.
66	Docid 033293.
67	Docid 032805.
68	T33137.
69	Docid 032805.
70	Docid 032805 at 814.

