



Department of Justice (Canada)

Ministère de la Justice (Canada)

Prairie Region, Saskatoon Office
10th Floor
123 - 2nd Avenue South
Saskatoon, SK S7K 7E6

Région des Prairies, Bureau de Saskatoon
10^e étage
123 - 2^e Avenue sud
Saskatoon, SK S7K 7E6

Telephone: (306) 975-5886
Facsimile: (306) 975-6240
Internet:

Our File: 2-30498
Notre dossier:

Your file:
Votre dossier:

April 5, 2004

HAND DELIVERED

Commission of Inquiry Into the
Wrongful Conviction of David Milgaard
1020 - 606 Spadina Crescent East
Saskatoon, SK S7K 3H1

Attention: Doug Hodson

Dear Mr. Hodson:

Re: David Milgaard - Application for Standing on behalf of the RCMP

Further to our recent discussions, you will find enclosed application for standing at the above-noted Inquiry on behalf of the Attorney General of Canada representing the Royal Canadian Mounted Police. Please be advised that my client will not be seeking funding.

I would appreciate you acknowledging receipt of this standing application. If you have any questions or concerns, please feel free to give me a call. Thank you.

Yours truly,

BRUCE GIBSON

Counsel

Civil Litigation and Advisory Services

BG/kmz

Enclosure

cc: RCMP "F" Division, Attn: Inspector Chuck Orem

**Commission of Inquiry Into the
Wrongful Conviction of David Milgaard**
Honourable Mr. Justice Edward P. MacCallum, Commissioner

Submissions On Behalf of the Attorney General of Canada
Representing the Royal Canadian Mounted Police

I. INTRODUCTION

1. On February 18, 2004 the Honourable Lieutenant Governor in Council ordered that an inquiry be made into the wrongful conviction of David Milgaard. The specific terms of reference indicated that the Commission of Inquiry would have:
 - a) 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; and
 - b) The responsibility to seek to determine whether the investigation should have been reopened based on the information subsequently received by the police and the Department of Justice.

II. SUBMISSIONS

2. It is respectfully submitted that the Royal Canadian Mounted Police (RCMP) had very limited involvement in the conduct of the original investigation into the death of Gail Miller. The carriage of that investigation rested with the Saskatoon Police Service and a small number of RCMP members assisted in carrying out some specified tasks at the behest of the Saskatoon Police Service.
3. In light of this fact, the RCMP submits that their proposed role in the Inquiry would focus on assisting the Commission as it seeks to determine whether the investigation into the death of Gail Miller should have been reopened based on information subsequently received by the police and the Department of Justice. The RCMP

undertook an investigation, related to this issue, as a result of allegations being made against the Saskatoon Police Service and prosecutors with the Saskatchewan Department of Justice.

4. On 92-04-14 the Supreme Court of Canada released its recommendation on David Milgaard's section 690 application to the Minister of Justice, pursuant to the *Criminal Code*. The Honourable Kim Campbell directed that a new trial be held for David Milgaard. The Minister of Justice and Attorney General for the province of Saskatchewan decided not to proceed with a new trial and to stay the charges against David Milgaard.
5. It is a matter of public record that allegations of criminal wrongdoing were made against the Saskatoon City Police and the Saskatchewan Department of Justice, essentially suggesting a concealment of evidence by police and prosecutors resulting in a cover-up and miscarriage of justice relating to David Milgaard.

A. RCMP Investigation into Alleged Coverup

6. On 93-01-13 the referenced allegations of wrongdoing were referred by the Saskatchewan Department of Justice to the RCMP for investigation. An investigation team of 12 members was assembled under the direction of Inspector M.J. Sawatsky. In order to avoid any potential conflict of interest, a special prosecution team was assembled consisting of Neil McCrank, Q.C. and Bruce Fraser, Q.C. Chief Crown prosecutor from Calgary, Alberta. The investigation and prosecution teams met on numerous occasions between the fall of 1992 and the summer of 1994 and had extensive discussions concerning the investigation and its findings. In February and July of 1994 respectively, the RCMP sent a main report and a supplementary report to Alberta Justice. The RCMP report detailed some 68 allegations against:
 - a) The Saskatoon City Police and its members;
 - b) Former Saskatchewan Crown prosecutor, T.D.R. Caldwell, Q.C.;

- c) Former Saskatchewan Director of Public Prosecutions, Serge Kujawa, Q.C., and other members of the Saskatchewan Department of the Attorney General, including the then Attorney General, Roy Romanow, Q.C.
7. The RCMP specifically investigated allegations of criminal wrongdoing and an attempt to obstruct justice, pursuant to section 139 of the *Criminal Code*.
8. As previously referenced, the RCMP reports to Alberta Justice detailed approximately 68 allegations. Aspects of the RCMP investigation addressed allegations against the Saskatoon City Police. It was alleged that "the person responsible for the so-called 'Fisher rapes' committed the Miller murder, and the police knew this and knew that person was not Milgaard, but charged and prosecuted Milgaard while knowing he was innocent." Based on the RCMP investigation, Alberta Justice concluded that there was no validity to the accusation and there was no evidence to support any allegation of an attempt to obstruct justice by anyone within the Saskatoon City Police.
9. It was also alleged "numerous witnesses that gave inculpable evidence at the Milgaard trial were told what to say by police investigators". The Alberta Justice report concluded that it could find no credible evidence to support the allegation that the Saskatoon City Police intimidated or coerced witnesses into giving untruthful evidence to implicate Milgaard in the murder.
10. It was further alleged that the Saskatoon City Police "failed to investigate Linda Fisher's statement in 1980 suggesting Fisher may have murdered Miller". The Alberta Justice report indicated that the RCMP interviewed Linda Fisher and concluded that all the information she provided was speculative and was not evidence to support an allegation that Larry Fisher committed the Miller murder. The Alberta Justice report concluded that the RCMP investigation had failed to uncover any evidence to support the allegations against the Saskatoon City Police.

11. The RCMP investigated the allegation that Mr. T.D.R. Caldwell, QC “consciously connected the Miller murder with the unsolved sexual assaults and failed to disclose to Milgaard’s counsel any details of these alleged offences”. The Alberta Justice report concluded that there was no evidence to suggest that Mr. Caldwell failed to disclose any evidence to the defence in this regard.
12. The RCMP investigated the allegation that Mr. Serge Kujawa, Q.C. “sought the direct indictment against Larry Fisher and prosecuted Fisher in Regina to avoid publicity and thereby continued the cover-up of the miscarriage of justice against Milgaard”. The Alberta Justice report concluded that there was no evidence that this was done in any way to cover-up a miscarriage of justice in the Milgaard file.
13. The RCMP investigated the allegation that the Director of Public Prosecutions for Saskatchewan, the Deputy Attorney General of Saskatchewan and the Attorney General of Saskatchewan “connected the Milgaard file with the Fisher file and knew that there was a miscarriage of justice.” The Alberta Justice report concluded that there was no evidence to support this allegation. The report also concluded that while the purpose of the RCMP investigation and the Alberta Justice assessment was to determine any evidence of criminal wrongdoing on the part of those responsible for the investigation and prosecution of David Milgaard, it was inevitable that the RCMP investigation would retrace some of the original investigation into the Miller murder and perhaps uncover new evidence. The RCMP report concluded that there was no new evidence that would exonerate David Milgaard and would inculpate any other person, including Larry Fisher.

B. The Larry Fisher Murder Investigation

14. On August 2, 1997 an RCMP task force undertook an investigation into the murder of Gail Miller. On November 22, 1999 Mr. Larry Fisher was convicted by the Honourable Mr. Justice G.N. Allbright and jury of one charge contrary to section 212 and 214(b) of the *Criminal Code* amended to read “did thereby commit first degree murder contrary to the provisions of the *Criminal Code of Canada*.” Mr. Fisher was

sentenced to life imprisonment on January 4, 2000. His appeal of that conviction was dismissed by the Saskatchewan Court of Appeal on September 29, 2003. Mr. Fisher presently has a leave application pending before the Supreme Court of Canada.

III. CONCLUSION


15. As outlined above, the RCMP never had carriage of the original investigation into the death of Gail Miller. They were, however, involved in subsequent investigations and reviews that necessarily involved the same set of circumstances. The RCMP seeks standing to ensure that the information in their possession, relevant to the investigation and prosecution of David Milgaard, is properly and completely brought before the Commission of Inquiry. The nature and extent of the RCMP investigation into the allegations of the referenced "cover-up" may impact upon the Inquiry's ability to determine factual issues and therefore will be relevant to the mandate of the Inquiry. It is anticipated there will be aspects of the Inquiry where it may not be appropriate for the RCMP to question witnesses. This would likely include but may not be limited to the initial Saskatoon Police Service investigation into the death of Gail Miller. Other counsel, no doubt, will canvass such questions. The situation may, however, arise where the RCMP wish to examine witnesses where their evidence calls into question the manner in which the RCMP carried out their investigation and review of the referenced allegations. This may require clarification by the RCMP who are best placed to ensure that all of the information is accurately brought before the Inquiry.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 5th day of April, 2004.

THE ATTORNEY GENERAL OF CANADA

Per:


Bruce Gibson
Counsel for the RCMP

THIS DOCUMENT WAS DELIVERED BY:

Department of Justice (Canada)
Saskatchewan Regional Office
10th Floor, 123 - 2nd Avenue South
SASKATOON, Saskatchewan
S7K 7E6

And the address for service is the same as above.

Lawyer in charge of file: Bruce Gibson
Telephone: (306) 975-5886
Facsimile: (306) 975-6240
File: 2-30498