

**COMMISSION OF INQUIRY**  
**Sitting at Saskatoon, Saskatchewan**

**IN THE MATTER OF**  
**A COMMISSION OF INQUIRY PRESIDED OVER BY THE**  
**HONOURABLE JUSTICE E. MacCALLUM INTO THE**  
**WRONGFUL CONVICTION OF DAVID MILGAARD, ORDERED**  
**BY THE LIEUTENANT-GOVERNOR IN COUNCIL, FOR THE PROVINCE OF**  
**SASKATCHEWAN, OC 84/2004**

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**Written Submissions on Behalf of Larry Fisher**

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**BRIAN A. BERESH**  
**BERESH CUNNINGHAM**  
**ALONEISSI O'NEILL HURLEY**  
300 MacLean Block  
10110 – 107<sup>th</sup> Street  
Edmonton, Alberta  
T5J 1J4

**Counsel for Larry Fisher**

341086

## Written Submissions on Behalf of Larry Fisher

Larry Fisher's interest as it relates to this Commission's Terms of Reference can be broken down into two main categories:

1. Whether the manner in which Mr. Fisher pled guilty to the rapes of [REDACTED] and the attempted rape of [REDACTED] concealed from the public and from David Milgaard the possible connection between those offences and the Gail Miller murder;
2. Whether Mr. Fisher's silence on the issue of and subsequent refusal to take responsibility for the murder of Gail Miller hindered or prevented efforts to reopen the investigation.

Apart from those two issues, Mr. Fisher played no role in the conduct of the investigation into the death of Gail Miller and subsequent criminal proceedings against David Milgaard. Although he became a central figure in Mr. Milgaard's efforts to have the Gail Miller murder investigation re-opened, Mr. Fisher's role was largely a passive one. He cooperated to a substantial degree with the authorities, but took no public position on whether the case should be reopened.

### **The Guilty Pleas**

Winnipeg Police arrested Larry Fisher on September 19, 1970 in Fort Garry, Manitoba after an attack on [REDACTED]. He shortly thereafter confessed to both that offence and a similar one against [REDACTED] on August 2, 1970 in Fort Garry.

While in custody in Winnipeg awaiting the disposition of those charges, Mr. Fisher admitted to Detective Lorne Huff of the Fort Garry R.C.M.P. his involvement in the offences in Saskatoon against [REDACTED]. That admission prompted the Saskatoon Police to send Detective Karst and Detective Nordstrom to

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<sup>1</sup> Docid: 002032.

Winnipeg to take statements from Mr. Fisher. He provided statements to them on October 22, 1970.<sup>2</sup> Although in October 1970, Mr. Fisher admitted to only two of the four Saskatoon offences, he ultimately pled guilty to all four in December 1971.

The suggestion has been made that Mr. Fisher's guilty pleas to the four Saskatoon charges were arranged in such a way as to prevent Mr. Milgaard, his counsel, or the public from becoming aware that Larry Fisher was responsible for those offences. It has been suggested that the four Saskatoon offences were sufficiently similar to the Gail Miller murder that if Mr. Fisher's guilty pleas had become public knowledge, it would have called David Milgaard's conviction into question. If the timing and location of Mr. Fisher's guilty pleas had the effect of preventing the public or Mr. Milgaard from finding out about them, that occurred without the knowledge or intention of Mr. Fisher.

In 1970 and 1971, while arrangements for the guilty pleas were being made, Mr. Fisher had no direct communication with the Saskatchewan Attorney General's Department.<sup>3</sup> Until his September 19, 1970 arrest, Mr. Fisher had had no prior involvement with the Justice System. He relied on his lawyer, Lawrence Greenberg, to work out arrangements for the guilty pleas with the Saskatchewan Attorney General.<sup>4</sup>

Mr. Fisher seldom spoke with Mr. Greenberg about the arrangements Mr. Greenberg was making.<sup>5</sup> He did not instruct Mr. Greenberg to have the guilty pleas heard in any particular location:

Q Did you tell Mr. Greenberg that you wanted the charges heard in Regina rather than Saskatoon?

A No.

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<sup>2</sup> Docid: 0012656, 012659.

<sup>3</sup> Docid: Testimony of Serge Kujawa, Inquiry Transcript 265021/15 – 18.

<sup>4</sup> Testimony of Larry Fisher, Inquiry Transcript 14661/15 – 14662/2.

<sup>5</sup> Testimony of Larry Fisher, Inquiry Transcript 14401/14 – 15.

Q Did you care where the charges were heard?

A No.<sup>6</sup>

Mr. Greenberg confirmed that the choice to have the guilty pleas heard in Regina had nothing to do with Larry Fisher.<sup>7</sup> Mr. Greenberg testified on that issue as follows:

Q Now, as far as where the charges were going to be dealt with, it appears that the direct indictment was brought before a Queen's Bench judge in Regina. Do you recall how it was that Regina was selected as the venue to hear the charge?

A No. That was something that was entirely within the Attorney General's department of Saskatchewan as to how they proceeded, where they proceeded, and when they proceeded. I could take a plane from Winnipeg to Saskatoon, or to Regina, or to wherever it was that they wanted to dispose of it.<sup>8</sup>

Serge Kujawa, the Director of Public Prosecution for Saskatchewan at the time of the negotiations, also testified that whether the guilty pleas were heard in Regina or Saskatoon seemed to be of no importance to Mr. Greenberg.<sup>9</sup>

Neither Larry Fisher nor Lawrence Greenberg attempted to arrange the guilty pleas in a way that would avoid publicity.<sup>10</sup> Mr. Kujawa never formed the impression from his communications with Mr. Greenberg that he was trying to avoid media scrutiny of the guilty pleas:

Q In your dealings with Mr. Greenberg do you recall receiving any requests from him or him taking any position that left you with the impression that he was trying to conceal the fact of Mr. Fisher's guilty pleas either from the public or from the media?

A There was zero, zero ingredients of that description involved, as far as I know.

Q Did Mr. Greenberg ever say anything to you that caused you to believe that Larry Fisher was trying to avoid media attention on his guilty pleas?

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<sup>6</sup> Testimony of Larry Fisher, Inquiry Transcript 14404/13 – 17; see also 144699/16 – 14700/7.

<sup>7</sup> Testimony of Lawrence Greenberg, Inquiry Transcript 13943/15 – 17.

<sup>8</sup> Testimony of Lawrence Greenberg, Inquiry Transcript 13942/20 – 13943/5.

<sup>9</sup> Testimony of Serge Kujawa, Inquiry Transcript 26503/11 – 15.

<sup>10</sup> Testimony of Lawrence Greenberg, Inquiry Transcript 13961/7 – 11.

A I got no impression to that effect at all.<sup>11</sup>

The suggestion has also been made that Mr. Fisher's guilty pleas were delayed until after David Milgaard's appeal to the Saskatchewan Court of Appeal had been heard in December of 1971. If that is the case, the delay was not occasioned by anything Mr. Fisher or Mr. Greenberg did.

Lawrence Greenberg knew nothing of David Milgaard's conviction or the fact that he was appealing.<sup>12</sup> Neither did Larry Fisher:

Q Well, when you were picked up in Fort Garry, would you have known that the Milgaard matter – or the Miller matter, rather, was supposedly solved?

A No.

Q So you thought it was still an open investigation into the murder of a nurse in your neighbourhood?

A I didn't know nothing about it then.<sup>13</sup>

In fact, Mr. Fisher had heard nothing of what had become of the Gail Miller murder investigation from the time he spoke to Detective McCorriston on the street on February 3<sup>rd</sup> until many years later when he received information that his wife, Linda, suspected him of the murder.<sup>14</sup>

In any event, any delays in arranging for the charges to appear in court in Saskatchewan were not of Larry Fisher's making. According to Mr. Greenberg, Mr. Fisher was always anxious to plead guilty to the Saskatoon charges.<sup>15</sup> He instructed Mr. Greenberg to have the guilty pleas entered as soon as possible.<sup>16</sup> Mr. Greenberg's correspondence with the Saskatchewan Attorney General's Department as early as February 8<sup>th</sup>, 1971 confirms his

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<sup>11</sup> Testimony of Serge Kujawa, Inquiry Transcript 26502/24 – 26503/10

<sup>12</sup> Testimony of Lawrence Greenberg, Inquiry Transcript 13961/21 – 24.

<sup>13</sup> Testimony of Larry Fisher, Inquiry Transcript 14065/6 – 12

<sup>14</sup> Inquiry Transcript 14272/13.

<sup>15</sup> Testimony of Lawrence Greenberg, Inquiry Transcript 13959/13 – 22.

<sup>16</sup> Testimony of Larry Fisher, Inquiry Transcript 14397/10 – 13.

desire to have Mr. Fisher's charges resolved as soon as possible. It was evident to Serge Kujawa,<sup>17</sup> and to Murray Brown,<sup>18</sup> that the delays in bringing the charges to court were caused in the Attorney General's Department, not by any foot dragging by Mr. Fisher or Mr. Greenberg.

### **Larry Fisher's Silence**

Larry Fisher's failure to discuss the Gail Miller murder in the years following David Milgaard's conviction and his refusal to accept responsibility for her death did not prevent police or the Department of Justice from re-opening the Gail Miller murder investigation. Nor did Mr. Fisher's actions do anything to cast suspicion on Mr. Milgaard and thereby undermine his efforts to have his case re-opened.

The first time Mr. Fisher was ever asked to provide an accounting for his whereabouts on the morning of January 31, 1969 was when he encountered Detective McCorrison in the 300 Block of Avenue O South on February 3, 1969. He told Detective McCorrison that on the morning of the 31<sup>st</sup> he had been working at the Education Building on the University of Saskatchewan campus for Masonry Contractors. He provided his name and address, and reported that he had caught the bus at 6:30 a.m. on the 31<sup>st</sup>.<sup>19</sup> Detective McCorrison recorded the information that Mr. Fisher provided him in his report dated February 5, 1969.

After that date, no police officer or prosecutor spoke to Mr. Fisher about the Gail Miller investigation until 1990. At that time Mr. Fisher co-operated with the Investigation being conducted by Detective Rick Pearson. He gave a statement under oath to Detective

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<sup>17</sup> Testimony of Serge Kujawa, Inquiry Transcript 26503/16 – 17.

<sup>18</sup> Testimony of Murray Brown, Inquiry Transcript 37442/14 – 23.

<sup>19</sup> Docid: 183171.

Pearson and Eugene Williams of the Department of Justice on July 12, 1990.<sup>20</sup> In that statement he denied killing Gail Miller.<sup>21</sup>

Mr. Fisher later testified before the Supreme Court on March 11, 1992.<sup>22</sup> He again denied involvement in Gail Miller's death.<sup>23</sup> At no time in any of his dealings with police, prosecutors or the courts did Mr. Fisher ever attempt to implicate David Milgaard or anyone else in the death of Gail Miller.

The name, address, place of work and employer Mr. Fisher provided Detective McCorrison on February 3<sup>rd</sup>, 1969 were all true. After his encounter with Detective McCorrison, Mr. Fisher did not hide, move or deviate from his routine, using the same bus stop each morning to get to work.<sup>24</sup>

Mr. Fisher provided Detective McCorrison sufficient information to check into his claim that he had been at work on the morning of January 31, 1969. Had Detective McCorrison done so and determined that Mr. Fisher had been absent from work, he had Mr. Fisher's correct name and address. With that information, he could easily have questioned Mr. Fisher's wife, Linda, and begun to investigate Mr. Fisher's activities of the morning of January 31<sup>st</sup>. Detective McCorrison's report containing Mr. Fisher's information remained on the Gail Miller murder file through the prosecution of David Milgaard, his conviction and his attempts to reopen the case years later.

When Mr. Fisher next dealt with Saskatoon police in October 1970, he was in custody in Winnipeg for the Fort Garry sexual assaults on [REDACTED]. At that time, Detective Karst, who had traveled to Winnipeg from Saskatoon, interviewed Mr.

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<sup>20</sup> Docid: 061960.

<sup>21</sup> Docid: 062075.

<sup>22</sup> Docid: 197598.

<sup>23</sup> Docid: 197605.

<sup>24</sup> Testimony of Larry Fisher, Inquiry Transcript 14684/9 – 14685/5.

Fisher about the four unsolved Saskatoon offences from 1968 and 1970. Mr. Fisher confessed to the offences on [REDACTED] on November 29, 1968<sup>25</sup> and [REDACTED] [REDACTED] in February 21, 1970.<sup>26</sup>

Although Mr. Fisher apparently initially denied the [REDACTED] [REDACTED] offences from 1968, he at some point must have acknowledged his responsibility for them, since he pled guilty to those offences in December of 1971. Mr. Fisher made no attempt in his statements of October 22, 1970, to minimize the circumstances of the offences against [REDACTED]

In his confessions to Detective Karst, Mr. Fisher did not attempt to characterize the [REDACTED] offences in a way that would minimize their similarities with the Gail Miller attack. He admitted being in possession of a knife during the [REDACTED] assault.<sup>27</sup> He admitted having followed [REDACTED] from the bus, grabbing her on the street and dragging her to a backyard beside a lane before committing the offence against her.<sup>28</sup>

When Linda Fisher had suspicions regarding her former husband in 1980, she acted on them and told Saskatoon police what she knew. Mr. Fisher had never asked her or threatened her not to go to police with information about him.

Mr. Fisher cooperated with police and prosecutors in the early 1990s, as well, although sometimes his cooperation came reluctantly or after some hesitation. During that time period, he often acted in accordance with advice he received from his lawyers.<sup>29</sup>

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<sup>25</sup> Docid: 012659.

<sup>26</sup> Docid: 012656.

<sup>27</sup> Docid: 012660.

<sup>28</sup> Docid: 012657.

<sup>29</sup> Testimony of Larry Fisher, Inquiry Transcript 14694/ 13-22.



Mr. Fisher provided blood, hair, saliva, urine and semen samples for forensic testing on March 8, 1992.<sup>30</sup> He submitted to a polygraph on July 9, 1990. When he learned through media reports in 1997 that police were looking for him as a result of the D.N.A. testing, he attended the R.C.M.P. Detachment in Saskatoon and contacted Saskatoon City Police.<sup>31</sup>

Throughout the early 1990s, David Milgaard's lawyers uncovered information about Mr. Milgaard's background and provided it to the authorities. As that information came in, the suspicion that Larry Fisher had killed Gail Miller grew.

Whatever evidence was available to police or prosecutors that Larry Fisher was actually responsible for Gail Miller's death, Mr. Fisher did nothing to prevent them from becoming aware of it. Mr. Fisher's failure to admit the murder did not conceal that evidence. It continued to exist irrespective of Mr. Fisher's claims of innocence.

Mr. Fisher took no steps to point police in a different direction, let alone in the direction of David Milgaard. When questions arose in the early 1990's about the validity of Mr. Milgaard's conviction in light of newly discovered evidence implicating Larry Fisher, he did not seek to avoid being blamed for Ms. Miller's murder by pointing the finger back at Mr. Milgaard.

Mr. Fisher readily admitted to Eugene Williams on July 12, 1990 that based on the recently discovered evidence against him, it was appropriate for authorities to consider him a likely suspect.<sup>32</sup> Although some continued to feel at the time that there remained a great deal of evidence against Mr. Milgaard, Mr. Fisher never adopted that position or suggested that the evidence against Mr. Milgaard made him a better suspect than Mr. Fisher. Whatever belief the authorities had in Mr. Milgaard's guilt, Mr. Fisher did not

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<sup>30</sup> Docid: 322475.

<sup>31</sup> Testimony of Larry Fisher, Inquiry Transcript 14574/6 – 14575/13.

<sup>32</sup> Docid: 062046 – 062047.

encourage them in that belief, nor did he ever suggest the Gail Miller murder investigation should not be reopened.

### **Systemic Issues**

As the Commission did not grant Larry Fisher standing for the “Systemic” phase of the Inquiry, no submissions will be made on systemic issues.

### **Summary of Larry Fisher’s Position**

Larry Fisher did not participate in, nor was he aware of any effort to conceal evidence in relation to the murder of Gail Miller.<sup>33</sup> Mr. Fisher did not have any knowledge of or play any role in attempting to obstruct or prevent the reopening of the Gail Miller murder investigation.<sup>34</sup>

From the time Mr. Fisher first confessed in October 1970 to the Saskatoon offences, he sought to take responsibility for them by entering timely guilty pleas. It did not matter to Mr. Fisher where the guilty pleas took place. He did not request that the pleas be entered outside of Saskatoon. He did not make any attempt to avoid public or media attention to his pleas, nor did he seek to delay the pleas until after Mr. Milgaard’s conviction appeal had been heard.

Although Mr. Fisher never confessed to the Gail Miller murder and maintains his innocence to the present time,<sup>35</sup> he made no effort to prevent David Milgaard from reopening the investigation. Mr. Fisher admitted his responsibility for the rapes he committed around the time of the Miller murder. At various times he cooperated in providing statements and other information to police and prosecutors. At no time did he

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<sup>33</sup> Testimony of Larry Fisher, Inquiry Transcript 14703/18-21.

<sup>34</sup> Testimony of Larry Fisher, Inquiry Transcript 14703/22 – 14704/2.

<sup>35</sup> Testimony of Larry Fisher, Inquiry Transcript 14265/6.

ever accuse David Milgaard of the murder of Gail Miller or suggest that the evidence implicated Mr. Milgaard. If evidence tending to implicate Mr. Fisher in the murder was overlooked or ignored during the original investigation or in the subsequent years, that oversight was not the result of any effort by Mr. Fisher to conceal it.