

**COMMISSION OF INQUIRY
INTO THE WRONGFUL
CONVICTION OF DAVID MILGAARD**

**SUPPLEMENTAL WRITTEN SUBMISSIONS OF
EUGENE WILLIAMS. Q.C.**

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A. Introduction

1. As permitted by the Rules of Procedure and Practice of this Commission, Eugene Williams, Q.C., is filing this supplemental written submission to respond to matters raised in other submissions that affect his interest. Those other submissions are those of David Asper and David and Joyce Milgaard.
2. In the main, a number of the submissions of those parties repeat assertions about the course of David Milgaard's application for mercy and the conduct of Federal Department of Justice officials, including Mr. Williams, that either have no foundation in or are directly contradicted by the evidence before the Commission.

B. Submissions of David Asper

3. The central unfounded claims reiterated in Mr. Asper's submissions are that Federal Justice regarded the section 690 review as an adversarial process, that Mr. Asper's lack of understanding of the 690 process was caused by Federal Justice officials and that the investigation of the application was undertaken "with rarely any effort being made by Ministerial staff to investigate and obtain fresh evidence" and subject to delay¹ (apparently governmental).
4. Such claims do not hold up in the light of the evidence. For example, the only participants in the 690 process whose conduct and words reflected an adversarial approach were counsel for Mr. Milgaard. As Mr. Asper testified, they were engaged in a "war of liberation" against "everyone", including Federal Justice officials.² Counsel for Mr. Milgaard developed a strategy to go after "the bad guys" - including Mr. Williams and his colleagues - to "identify them, single them out, identify bad guys".³ This approach was in place before the end of 1989, while the first application was being investigated by the Minister's staff.

¹ Submission of David Asper, pp. 9 - 10

² Inquiry Transcripts, D. Asper, 25153 - 25154

³ Inquiry Transcripts, D. Asper, 25158 - 25159

Whether or not that approach either advanced Mr. Milgaard's interests or was in the finest traditions of the bar, it is plain on the evidence that it was generated by nothing other than a tactical choice made by counsel for Mr. Milgaard.

5. As for the knowledge of the process, from the first inquiry of Mr. Milgaard to the Minister in 1986 to the launching of the formal application in December, 1988, Federal Justice responded promptly with advice as to what would be required for a consideration of the application.⁴
6. Less formally, the channels of communication between counsel for Mr. Milgaard and Federal Justice were wide open. As Mr. Asper noted in reference to the situation by April, 1989:

There was a fair bit of informal communication, certainly with Mr. Wolch and the senior members of the department, and I can't be specific, but a fair bit with Mr. Williams and I.⁵

7. The documentary record - notably Mr. Williams' comprehensive recording of his communications and activities - also demonstrates a most conscientious level of responsiveness to inquiries from Mr. Milgaard's counsel.⁶
8. That same documentary record effectively illustrates the lack of substance to claims of Federal delay or lack of investigative effort. As has been noted in various submissions, any delay in the 690 process was largely a function of the tactics utilized by counsel for Mr. Milgaard in pursuing the application. Indeed, the evidence shows a history of complaints from David and Joyce Milgaard about their lawyers' delay well before the application was first made in December, 1988.⁷

⁴ Docid 333268 and Docid 004868, Letters of March 11, 1986 and February 16, 1989 from Federal Justice to Mr. Milgaard and his counsel

⁵ Inquiry Transcripts, D. Asper, 35838 / 3 - 14

⁶ Including a readiness to meet with counsel for Mr. Milgaard; see, for example Docid 157023, Eugene Williams' letter to Hersh Wolch of October 11, 1989

⁷ For example, Docid 162412, a letter of September 15, 1987, from Joyce Milgaard to David Asper and Docid 182098, David Asper's memo of September 15, 1986 to Hersh Wolch

9. Similar observations can be made about allegations that the supposed lack of effort on the part of Federal officials. The record shows that an enormous amount of time and effort was expended by Mr. Williams, his colleagues and police investigators in interviewing witnesses and pursuing other investigative steps during the application process.⁸
10. The submissions of Mr. Asper in these respects are without evidentiary foundation.

C. Submissions of David and Joyce Milgaard

11. Counsel for David and Joyce Milgaard advanced similar notions in their written submissions (for example, repeating claims of delay and lack of investigative thoroughness or objectivity on the part of Federal and other officials).⁹ Again, as noted above, these claims are not borne out if one fairly and fully considers the evidence before this Inquiry. The comments in Part B above apply with equal force to those complaints.
12. A specific additional complaint related to the supposed failure to investigate Larry Fisher.¹⁰ Again, as the evidence demonstrates, the Federal Justice examination was both thorough and timely.¹¹ An illustration of that timeliness is found in Mr. Williams' response to Mr. Asper's telephone advice of the tip that Larry Fisher was Gail Miller's killer: Mr. Williams immediately - in a literal sense - set in motion the process of investigating that tip.¹²
13. With respect to the Larry Fisher similar fact evidence, the submissions of David and Joyce Milgaard ignore two important features of that analysis:

⁸ See, for example, charts of activities in the Written Submissions of the Minister of Justice (Canada) (at Appendix B) and Mr. Williams' Written Submissions (paras. 33 - 34; 39 - 41)

⁹ Written Submissions, David and Joyce Milgaard, paras. 75 - 76; 82 - 83

¹⁰ See, for example, paras. 75 and 76 of the Written Submissions of David and Joyce Milgaard

¹¹ Written Submissions, Eugene Williams, Q.C., Part F

¹² Docid 001810, Letter of March 1, 1990 from Eugene Williams to Sgt. R. Pearson

- First, there was clearly more information about Larry Fisher's offences available on the second application than the first¹³. Correspondingly, that gave the Supreme Court of Canada additional information to consider in 1992 beyond what was available to Mr. Williams in 1990.
- Second, whatever degree of similarity one might have seen between Larry Fisher's offences and Gail Miller's murder, and whether that evidence was being tendered by the Crown in a prosecution against Larry Fisher or by David Milgaard in his own defence, such evidence could not be admissible absent a sufficient evidentiary link between Larry Fisher and the murder of Gail Miller. That link was not established on the available evidence when the first application was assessed.¹⁴ That situation was clearly different by the time the case was considered by the Supreme Court of Canada.

14. Finally, the written submissions of David and Joyce Milgaard make the claim that a "holistic approach" was taken in the application.¹⁵ (Interestingly, that assertion was followed three paragraphs later by a complaint about Federal Justice's requirement that the application be "complete".)¹⁶ The claim to a holistic approach is not reflected in the evidence. As Mr. Asper pointed out on a number of occasions, a deliberate tactical decision was taken to advance the application on a piecemeal basis. While Mr. Asper sought a more "fulsome" approach, Mr. Wolch's preference for the piecemeal approach carried the day.¹⁷

¹³ See, for example, the charts at paras. 39 - 41 of Eugene Williams' Written Submissions

¹⁴ Mr. Williams noted this aspect of the legal situation in Docid 004373, his assessment of August 28, 1990

¹⁵ Written Submissions of David and Joyce Milgaard, para. 71

¹⁶ Written Submissions of David and Joyce Milgaard, para. 74

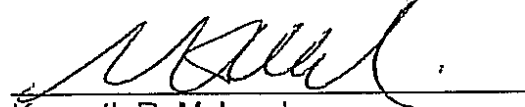
¹⁷ Inquiry Transcripts, D. Asper, 35836 - 35838

D. **Conclusion**

15. As described above, the complaints about Federal officials and particularly Eugene Williams do not stand up to scrutiny and are without merit. Having regard to the evidence, the Federal review of Mr. Milgaard's section 690 application was conducted thoroughly, objectively and with an even and measured hand.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th DAY OF
NOVEMBER, 2006.

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