

*Commission of Inquiry*  
*Into the Wrongful*  
*Conviction of David Milgaard*  
*before*  
**THE HONOURABLE MR. JUSTICE**  
**EDWARD P. MacCALLUM**

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at the  
Delta Bessborough Hotel at  
Saskatoon, Saskatchewan

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On Monday, April 18th, 2005

Volume 41

Inquiry Proceedings



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*Mr. Eamon O'Keefe, Esq.,*      **for** Mr. Larry Fisher  
*Mr. David Frayer, Q.C.,*        **for** Minister of Justice



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**Transcript of Proceedings**

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: Mr. Commissioner, before we call our first witness, there's a couple of matters I would like to deal with.

Last Thursday the Commission granted a publication ban that prohibited the publication, broadcast or dissemination of the names of nine assault victims and these sexual assault or assault victims and their names were identified in the ban. Five of these witnesses will be testifying this week. As you are aware, the daily transcripts of our proceedings and the exhibits that are admitted are posted on the Commission's web site every evening. The publication ban that was granted on Thursday did not preclude the identification of these witness names in either the transcript of their evidence or any exhibits that are admitted in evidence. Over the weekend I had occasion to reconsider this issue and as well talk to some of the witnesses and I've concluded, Mr. Commissioner, that it would be appropriate for us to extend the



1 publication ban further and provide that the  
2 Commission and the Commission staff take steps to  
3 remove the names of these assault victims from  
4 both the transcripts and any exhibits so that  
01:01 5 their names will not appear on the Commission web  
6 site and I have got a revised publication ban, if  
7 I could call it up, it's 325552, and you'll see  
8 it has revised a couple of things. I have added  
9 V1 for victim to each of the names so that we  
01:02 10 have identifying initials. I've also added  
11 (V10)----- nee (V10)- as number 10 which I  
12 think should be in the publication ban as well.

13 Paragraph 2, I have left part  
14 of that so that the official transcript of these  
01:02 15 proceedings will have the witnesses' names in it  
16 and the names of the witnesses will not be  
17 redacted from the exhibit documents, so in other  
18 words, during the course of the hearing, if  
19 counsel wish to refer to a transcript or a  
01:02 20 document, the witnesses' names will be in those  
21 documents.

22 Now, we've got a ban that  
23 prevents the publication of their names by the  
24 media. Paragraph 3, I have added that prior to  
01:02 25 posting the official transcript and exhibits on



1 the Commission web site, the names of these  
2 witnesses shall either be redacted or replaced  
3 with the initials referred to in paragraph 1 and  
4 so that the names will not appear on the web  
01:03 5 site. It may take us this week, we may be  
6 delayed a little bit in getting the transcripts  
7 up in the evening and the exhibits, but I think  
8 over the next five week break we can get ahead on  
9 that so it doesn't cause a problem and as well  
01:03 10 counsel will receive the full transcript on  
11 CaseVault without any redaction, so I've  
12 circulated this with counsel. I'm not sure if  
13 there are any concerns with this. I suspect  
14 there's general agreement with this and I ask  
01:03 15 that this publication ban in the form of this  
16 document be granted.

17 COMMISSIONER MacCALLUM: I don't see  
18 anybody indicating they want to make a comment.  
19 No, I think that's quite satisfactory. The only  
01:03 20 reason we're using names at all instead of  
21 aliases or numbers is as a matter of convenience  
22 to conduct our hearings expeditiously, everybody  
23 should know that, otherwise there would be an  
24 absolute ban, but there's just too many of these  
01:04 25 people to start calling them one, two, three,



1 four, it would be terribly confusing, so the  
2 order will go. Thanks, Mr. Hodson.

3 MR. HODSON: Thank you. The witnesses this  
4 week, as I explained last week, are going to be  
01:04 5 five sexual assault victims from the 1968 to '70  
6 time frame. On Thursday I read in the details of  
7 the assault incidents for the first three  
8 witnesses, that being (V1)----- nee (V1)-,  
9 (V2)----- nee (V2)----- and  
01:04 10 (V3)-----, maiden name is (V2)-----, and I  
11 would submit, Mr. Commissioner, that there's no  
12 need for me or any other counsel to question  
13 these witnesses any further with respect to the  
14 details of the assaults. We have read into the  
01:05 15 record sworn testimony where they have explained  
16 or gone through that and I don't see any need to  
17 question these victims again about that. If  
18 there is a relevant reason that counsel has to  
19 question any of these witnesses, I would ask that  
01:05 20 they raise it with you first, Mr. Commissioner,  
21 before they ask the question.

22 As well, I would ask all  
23 counsel to keep in mind and to try and limit our  
24 questions of these witnesses to matters of  
01:05 25 relevance to the Commission and I've identified





1 three areas, it is not exhaustive, but I think  
2 first, and I would like to set this out on the  
3 record as to where it is that the evidence of  
4 these witnesses is pertinent to our inquiry.

01:05 5 First, in the conduct of the  
6 investigation into the death of Gail Miller,  
7 which is part of our mandate, I would suggest  
8 that how the police dealt with these sexual  
9 assaults and how the investigations overlapped  
01:05 10 and intersected or didn't overlap and intersect  
11 with the Gail Miller investigation is an issue  
12 before the inquiry and so I intend to question  
13 these witnesses about their dealings with the  
14 police in the investigation.

01:06 15 Secondly, we know from the  
16 record that Larry Fisher pled guilty to four of  
17 these assaults and was convicted of these  
18 assaults in December of 1971 and the  
19 circumstances surrounding his conviction for  
01:06 20 these assaults is an issue in these proceedings  
21 and I will question the witnesses about their  
22 dealings or knowledge -- their dealings with  
23 police in connection with Mr. Fisher's conviction  
24 and their knowledge of that.

01:06 25 Thirdly, in the reopening



1 phase, information about the sexual assaults, the  
2 police investigation of these assaults and the  
3 circumstances of Mr. Fisher's conviction for  
4 these assaults became an issue in the early 1990s  
01:06 5 and this information may be relevant in the  
6 determination of whether the investigation into  
7 Gail Miller's death should have been reopened, so  
8 I intend to question the witnesses about the  
9 public disclosure or disclosure of the assaults  
01:07 10 and the convictions in the early 1990s, and as I  
11 said, I do not intend my statement to be  
12 exhaustive, but simply to indicate where I intend  
13 to go with these witnesses.

14 Lastly, if I could ask counsel  
01:07 15 when questioning these witnesses, I would ask  
16 that we try and limit our questions to questions  
17 that are both appropriate for these witnesses and  
18 questions that these witnesses can properly  
19 answer, and by appropriate for these witnesses I  
01:07 20 mean this: We will be calling police and  
21 authorities who subsequently reviewed, analysed  
22 and compared the various assaults, *modus*  
23 *operandi*, etcetera, we will be calling those  
24 people, and I would submit those are the people  
01:08 25 that these analyses and comparisons should be put



1 to as opposed to these witnesses, and so again, I  
2 do not want to limit any counsel's questions that  
3 are of a relevant matter, but I simply point that  
4 out, that we will be calling other witnesses who  
01:08 5 have looked at these and we will be asking them  
6 about their analyses, etcetera.

7 So with those remarks, I should  
8 also just add for the record, the setup that we  
9 have, the first witness will be (V1)-----, she  
01:08 10 is located in another room in the hotel and we  
11 have a video camera, there's a monitor here for  
12 examining counsel to see (V1)----, as well the  
13 Commissioner has a monitor. Other than that,  
14 there's no other monitor and there is a  
01:08 15 publication ban of any images, so there should be  
16 no photographs or video taken of any of the  
17 monitors of the witness, and the witnesses have  
18 expressed concern about that and so,  
19 Mr. Commissioner, maybe if I could just clarify  
01:08 20 that and have you order that there be no video or  
21 photographs of the monitors that show the  
22 witnesses.

23 COMMISSIONER MacCALLUM: That's so ordered.  
24 Do members of the media have any questions about  
01:09 25 that? Do you understand? Thank you.



1 MR. HODSON: And so in the witness room  
2 they have a television set, there's a camera here  
3 so the witness will be able to see and hear the  
4 questions. They also have a monitor where they  
01:09 5 can see the documents and we will hear their  
6 voice in the room.

7 So with that, I would call the  
8 first witness which is (V1)----- and I believe  
9 Ms. Beitel, our clerk, is there to swear her in.

01:10 10 (V1)-----, sworn:

11 BY MR. HODSON:

12 Q Good afternoon, (V1)----.

13 A Good afternoon.

14 Q Thank you very much for agreeing to testify before  
01:10 15 the Commission. I understand that your maiden  
16 name is (V1)-, (V1)-----; is that correct?

17 A Correct.

18 Q And that your date of birth is October the 5th,  
19 1946?

01:10 20 A Yes.

21 Q And that you are currently 58 years of age?

22 A Yes.

23 Q And I will be asking you some questions this  
24 afternoon about an assault that took place on  
01:10 25 October 21st, 1968 in Saskatoon, okay?



1 A Yes.

2 Q And at that time, (V1)----, you were 22 years of  
3 age; is that correct?

4 A Yes.

01:10 5 Q And I would like to just firstly go through your  
6 involvement in that matter just briefly. I  
7 understand that you would have been interviewed by  
8 members of the Saskatoon City Police Service at  
9 that time; is that correct?

01:10 10 A Yes.

11 Q That you would have provided the police a written  
12 statement?

13 A Yes.

14 Q And that you would have had some further dealings  
01:11 15 with the police in the course of that  
16 investigation?

17 A Yes.

18 Q And I understand at some point, (V1)----, you  
19 became aware that Larry Fisher was convicted of  
01:11 20 assaulting you; is that correct?

21 A Yes.

22 Q And when was that? Do you recall when and how you  
23 became aware of that?

24 A No, I don't.

01:11 25 Q Would it have been in 1990 or thereabouts that you



1 became aware that Mr. Fisher was convicted?

2 A Around there, yes.

3 Q And who was it that told you that?

4 A The first person I heard it from was

01:11 5 Mrs. Milgaard.

6 Q And I'll come back to that in a moment. Apart  
7 from -- and I think the record suggests that that  
8 was in 1990 or 1991. Does that sound right as far  
9 as the time frame?

01:11 10 A I don't recall, but it seems right.

11 Q And then after that do you recall having any  
12 discussion with any RCMP officers in the course of  
13 any of their investigations?

14 A No, I don't.

01:12 15 Q And I understand that you testified at the trial  
16 of Larry Fisher; is that correct?

17 A Yes, I did.

18 Q And that you testified at the *voir dire* at Larry  
19 Fisher's trial; is that correct?

01:12 20 A Yes.

21 Q So I would like to go back to 1968 and ask you a  
22 few questions about your dealings with the police.  
23 Do you recall the police officer or officers that  
24 you dealt with at the time?

01:12 25 A Yes, I do.



1 Q And who do you remember?

2 A I don't know them by name, but I remember two  
3 police officers coming.

4 Q Okay. Does the same Bev Cressman sound familiar?

01:12 5 A Yes.

6 Q And was that an officer that you had dealt with?

7 A Yes.

8 Q And you are able to recall that today, that name,  
9 are you?

01:12 10 A Yes, I do.

11 Q Any others?

12 A No.

13 Q And I appreciate that this was 37 years ago, 36  
14 years ago. Are you able to give us any sense,  
01:13 15 (V1)----, about how many times you would have  
16 talked to the police?

17 A I don't recall.

18 Q Are you able to give us a range, an estimate, a  
19 few times, many times, anything like that?

01:13 20 A Just a few times.

21 Q And the incident, as I said, took place on October  
22 21st, 1968. Are you able to tell us over what  
23 time period it was that you would have had contact  
24 with the police, and by that just let me clarify  
01:13 25 that. How many months or years after the date of



1 the incident were you talking to the city police  
2 about this matter?

3 A I really don't recall how often.

4 Q Okay. And I believe, (V1)----, that you gave a  
01:13 5 statement to the police at or about the time of  
6 the assault?

7 A Yes, I did.

8 Q I'm going to call up on the screen a copy of this  
9 handwritten statement and I have just a couple of  
01:14 10 questions, I do not propose to go through it, it's  
11 document 042504. Can you see that on the computer  
12 screen?

13 A Yes, I do.

14 Q And is that your signature in the bottom right  
01:14 15 corner? Can you see that?

16 A Yes. Yes, it is.

17 Q And do you recall giving this statement to the  
18 police?

19 A Yes.

01:14 20 Q And prior to coming here today, I understand that  
21 you had an occasion to read through this  
22 statement; is that correct?

23 A Yes.

24 Q And can you tell us whether this statement is  
01:14 25 accurate and truthful?





1 A Well, of what I can remember of it, yes, it is.

2 Q Okay, next I want to show you a newspaper article,  
3 and if I could call up 039527. And this is a  
4 newspaper article, (V1)----, dated December 14,  
01:15 5 1968, so it's a couple of months after your  
6 assault, and I believe I have -- you have seen  
7 this article in the last -- I have showed it to  
8 you today and you may have seen it before; is that  
9 correct?

01:15 10 A No, I didn't see it before, I don't recall if I  
11 did.

12 Q Okay. So -- but you went through it with me  
13 today, you read this, and so you know the document  
14 I'm talking about?

01:15 15 A Yes I do.

16 Q And do you recall, then, seeing this in the  
17 newspaper back in 1968 or --

18 A No I don't.

19 Q Do you recall -- and, again, back to late  
01:15 20 1968-1969 -- do you recall either knowing about or  
21 hearing about other assaults that may have taken  
22 place in and around the time of your assault?

23 A No, I don't recall.

24 Q Now approximately three months after your assault  
01:16 25 Gail Miller was murdered on January 31, 1969; you



1 are aware of that now, are you?

2 A Yes, I am now.

3 Q Back at the time, (V1)----, do you recall whether  
4 you became aware of the murder or not?

01:16 5 A Umm, no I don't.

6 Q Do you know at what point you did become aware of  
7 it, would it be sometime later or --

8 A Well, it was kind of later, yes.

9 Q And when you say "later" are we talking months,  
01:16 10 years, or are you able to help us out on that?

11 A I'm -- I don't recall.

12 Q Okay. If I could call up document 025157, please.  
13 And, (V1)----, this is a police report dated April  
14 15th, 1969 prepared by Officer Bev Cressman, and  
01:17 15 this is a copy of the document that I showed you  
16 earlier today in our office that I went through  
17 with you; okay, do you remember that document?

18 A Yes I do.

19 Q And I'll just go through parts of this and then  
01:17 20 I'll have some questions for you. If you can  
21 maybe just call out the top paragraph, please.  
22 And it says -- and I'll just read this, (V1)----,  
23 and then I'll have a couple of questions, so just  
24 follow along, please. It says:

25 "Regarding this file, on April 7th, I



1                   called at 210 Avenue N South, the home  
2                   of (V1)----- aunt and located  
3                   (V1)----- . She was advised that I  
4                   wished to show her some pictures in  
5                   regards to the (V1)- Rape file, and that  
6                   I wished a Saliva Test and a blood test  
7                   from her. She agreed to this and was  
8                   transported to the Police station. At  
9                   the Police station (V1)----- was shown  
10                  a group of 19 photos - snapshots of  
11                  various people picked at random from the  
12                  Morality Office Drawer. Amongst these  
13                  photos was included one of David  
14                  Milgaard, (this last photo was obtained  
15                  from Detective Sergeant R. Mackie).  
16                  (V1)----- looked at these photos which  
17                  were all placed on the desk at one time,  
18                  and immediately picked out the photo of  
19                  David Milgaard and one other male person  
20                  whose identity at this time is not known  
21                  to me. She stated that she had  
22                  definitely seen both these persons  
23                  around before somewhere however couldn't  
24                  remember where or when. She could not  
25                  identify any of these persons as the one



1                   who may have raped her. The position of  
2                   these photos was noted in my memo book.  
3                   Both the photos which were picked out  
4                   were initialed by (V1)----- and myself  
5                   and the time and date placed on back of  
6                   them. They are presently stored in an  
7                   envelope in my locker in the Morality  
8                   Office along with the other 17 photos."

9                   (V1)----, do you recall -- first of all, did you  
01:19 10                  live with your -- did your aunt live on Avenue N  
11                  South at the time; do you recall that?

12        A           Yes?

13        Q           And was her name Mrs. Hattie Hnatiuk?

14        A           No, that's not the name at all.

01:19 15        Q           Okay. What was her name at the time?

16        A           (Redacted).

17        Q           And lived at 210 Avenue N South; is that right?

18        A           Yes. The number of the house I don't remember,  
19                   but --

01:19 20        Q           Avenue N?

21        A           Yes.

22        Q           Okay. Now do you recall going down to the police  
23                   station with a police officer to look at photos?

24        A           I don't recall the photo thing.

01:19 25        Q           Do you recall looking at a police line-up of



1 individuals?

2 A Yes.

3 Q Tell us what you recall about that?

01:20 4 A I recall seeing two people there that looked like  
5 might have been.

6 Q Okay. And were these -- were these real people  
7 behind a glass, or behind a wall or something like  
8 that, is that what you are --

9 A Yes, behind a glass, to my knowledge.

01:20 10 Q And are you telling us these were not photographs  
11 but, actually, individuals that you looked at?

12 A Yes.

13 Q And do you recall identifying any of those people?

01:20 14 A Well, not really, I -- sort of, because I didn't  
15 see the face.

16 Q Okay. When you say "didn't see the face" --

17 A That's --

18 Q -- is that of your attacker?

19 A Yes.

01:20 20 Q And let me ask you that; were you, did you see the  
21 face of your attacker such as to enable you to  
22 identify your attacker in a photograph or in a  
23 line-up, did --

24 A I don't recall seeing -- looking at a photograph.

01:20 25 Q Let me try that again. My question is whether or



1 not you saw your attacker, whether you saw your  
2 attacker in sufficient detail to allow you to look  
3 at a photograph or at an individual, and enable  
4 you to identify that person as the attacker? Do  
01:21 5 you understand my question?

6 A Not quite, no.

7 Q Okay. Let's try it again. What I would like to  
8 know is whether you would have been able to  
9 identify your attacker based on what you observed  
01:21 10 during the incident?

11 A Well, I didn't see the face. I know there was  
12 long hair.

13 Q Okay. So that, if someone showed you a photograph  
14 of an individual, would you have been able to  
01:21 15 identify the individual who attacked you from a  
16 photograph?

17 A I'm not sure.

18 Q Okay. So now let's just go back to the police  
19 report. Do you -- does the name David Milgaard,  
01:21 20 do you recall that back at the time, (V1)---,  
21 identifying a photograph of David Milgaard?

22 A I'm not quite sure, but I think I had picked out  
23 two.

24 Q Okay. Now the report also goes on to talk about  
01:22 25 getting a saliva sample from you; do you recall



1           being asked for that and providing that?

2       A       I kind of recall, yes.

3       Q       Okay. And the remainder of this report -- and I  
4           don't propose to go through it,

01:22 5           Mr. Commissioner -- talks about a suspicious  
6           fellow at the bus depot, and it's fairly  
7           extensive, and you have read that, (V1)----,

8           earlier today. Do you have any recollection of  
9           giving the police information about a suspicious  
01:22 10          person at the bus depot?

11      A       No I don't.

12      Q       Okay.

13      A       Not at all.

14      Q       Okay. That, fine, we're done with that document.  
01:22 15          If we could just go back, just generally, I think  
16          you have told us you remember looking at some  
17          individuals in a line-up; do you remember how many  
18          times you might have looked at people or photos or  
19          anything of that nature?

01:23 20      A       No, I don't remember.

21      Q       Are you able to recall whether, and again back  
22          1968, '69, 1970 or thereabouts, whether the police  
23          ever informed you that they may have a suspect for  
24          your assault?

01:23 25      A       I don't really recall. It seems they had said



1           they might have someone but I don't recall.

2           **Q**       Okay. And do you know who would have told you  
3                   that, or when, are you able to help us out on that  
4                   at all?

01:23 5           **A**       The one person I talked to a few times was  
6                   Cressman.

7           **Q**       Okay.

8           **A**       I would think it would have been him.

9           **Q**       Okay. Do you remember being told by anybody from  
01:23 10                  the police that your investigation file would be  
11                  closed?

12          **A**       No, I don't recall that.

13          **Q**       Are you able to tell us what would have been the  
14                   last -- or the nature of your discussions with the  
01:24 15                  police the last time that you talked to them about  
16                   this matter, or how it was left off with you, are  
17                   you able to?

18          **A**       No, I'm sorry, I don't remember.

19          **Q**       And is it fair to say that since the  
01:24 20                  investigation, whether it be in 1968, 1969 or  
21                  thereabouts, have you talked to anybody from the  
22                  Saskatoon City Police about this assault since  
23                  then?

24          **A**       No.

01:24 25          **Q**       If I could call up document 260945. And,





1 (V1)----, this is an information that charges  
2 Larry Fisher with assaulting you, and this  
3 information, this charge is laid on December 30th,  
4 1970, and my question is were you aware, at this  
01:25 5 time, that the police had charged Larry Fisher  
6 with assaulting you?

7 A No.

8 Q If I could call up document 03 --

9 COMMISSIONER MacCALLUM: Is that date '70?

10 MR. HODSON: Yes, it is.

11 COMMISSIONER MacCALLUM: It is December  
12 '70? Thanks.

13 BY MR. HODSON:

14 Q Now, next, if I could call up document 261053.

01:25 15 And, (V1)----, this is a letter dated March 17th,  
16 1971, and it's a letter from the Saskatoon City  
17 Police to the Deputy Attorney General, and I  
18 believe I have shown this to you before. I would  
19 like to go to the second page please, 261054, and  
01:26 20 if you could call out that. And in this letter,  
21 (V1)----, this is March of 1971 so this is about 2  
22 1/2 years after the assault, it says here:

23 "During the investigation of this

24 offence (V1)---- viewed police photos,

01:26 25 including that of Fisher, and was unable



1 to identify him as her assailant."

2 And do you recall whether or not you were shown  
3 any photographs of Mr. Fisher?

4 A No, I'm sorry, I don't recall.

01:26 5 Q If we could then go ahead to document 039619. And  
6 (V1)----, this is a document dated December 21,  
7 1971, and this is a document that shows that Larry  
8 Fisher was convicted of sexually assaulting you on  
9 October 21, 1968 and that he was sentenced to four  
01:27 10 years concurrent to another sentence that he was  
11 already serving? Were you -- did you become aware  
12 of this, at the time, that Mr. Fisher was  
13 convicted and sent to jail for assaulting you?

14 A No.

01:27 15 Q Okay, that document we're done with. Now you told  
16 us a bit earlier that you became aware of Mr.  
17 Fisher's conviction for your assault, I think, in  
18 the 19 -- early 1990's from Mrs. Joyce Milgaard;  
19 is that right?

01:27 20 A Yes it is.

21 Q Can you tell us what you recall about your  
22 interaction and meeting with Mrs. Milgaard?

23 A She just came over to my house and wanted to talk  
24 to me. She just tried to tell me that her son  
01:28 25 didn't do that, that it was Larry Fisher, and I --



1 Q When you say "her son didn't do that" what are you  
2 referring to?

3 A She said "no, he didn't do that", she says, "it's  
4 Larry Fisher and I know he did".

01:28 5 Q Okay. Was this related to Gail Miller or to your  
6 assault?

7 A To my assault.

8 Q Okay. And do you recall what else was discussed?

9 A I don't really recall everything else she said.

01:28 10 Q Do you recall whether anybody was with her?

11 A Yes there was.

12 Q And do you remember who that was?

13 A I don't know his name, but it was a private  
14 investigator.

01:28 15 Q Does the name Paul Henderson sound familiar?

16 A Umm, I'm sorry, I don't --

17 Q That's fine?

18 A -- don't recall.

01:29 19 Q Were you reluctant to talk to Mrs. Milgaard and  
20 this other fellow?

21 A No, I didn't want to.

22 Q Okay. And why not?

23 A I just didn't think I should talk to them.

01:29 24 Q And did this, learning this information, upset you  
25 (V1)----?



1 A Well, of course it did, but I just try and put  
2 everything behind.

3 Q Okay. Were you contacted by any media around this  
4 time or in the following years?

01:29 5 A No.

6 Q Were you contacted by the RCMP in 1993; do you  
7 remember that?

8 A Not that I recall.

9 Q And then if I can go ahead, Mr. Commissioner,  
01:29 10 we've already identified for the record her  
11 evidence at the voir dire and at the trial.  
12 (V1)----, you testified twice in the Larry Fisher  
13 proceedings, once at a voir dire and once at the  
14 trial; is that correct?

01:29 15 A Yes.

16 Q And did you tell the truth, to the best of your  
17 recollection, at that time?

18 A I did.

19 Q Yeah. Those are all of my questions, (V1)----. I  
01:30 20 will just check, if you want to just wait for a  
21 moment, and I'll see if other counsel have any  
22 questions. I believe Mr. Lockyer has a question  
23 for you, and he is counsel for Joyce Milgaard.

24 **BY MR. LOCKYER:**

01:30 25 Q Yes, (V1)----, on reflection would it have helped



1           you, do you think, if you had known about Larry  
2           Fisher's arrest and confession and guilty plea to  
3           assaulting you in 1968?

4           A           Help me in which way?

01:30 5           Q           If you had been told back in 1970 or 1971, would  
6           that have been a help, of help to you?

7           A           I don't understand what you mean by "help to me?"

8           Q           Well you went through the next 19 or 20 years  
9           without knowing that someone had been apprehended  
01:31 10          and, indeed, had confessed to having assaulted  
11          you; do you wish that you had been told that back  
12          in 1970?

13          A           Yes, just so that I would know who had done it,  
14          yes.

01:31 15          Q           And how do you think that would have helped you,  
16          just briefly?

17          A           (Witness Shrugs).

18          Q           You shrug. Do your best?

19          A           I'm sorry but I can't answer.

01:31 20          Q           Okay.

21                    COMMISSIONER MacCALLUM: How is this  
22                    helping us, Mr. Lockyer, how is it relevant?

23                    MR. LOCKYER: I'm not pursuing it, she  
24                    doesn't want to answer, Mr. Commissioner.

01:32 25                    COMMISSIONER MacCALLUM: No.



1 BY MR. LOCKYER:

2 Q You have had contact with the authorities since  
3 Mrs. Milgaard came and spoke to you; is that  
4 right?

01:32 5 A I have had?

6 Q Contact with the authorities, police and  
7 prosecutors, since Mrs. Milgaard spoke to you in  
8 1990-1991; is that right?

9 A Yes, just when I had to come to Court.

01:32 10 Q Okay. That would have -- did you -- did anyone  
11 speak to you from the police or from the  
12 Department of Justice in the two years after Joyce  
13 Milgaard came to your home?

14 A No.

01:32 15 Q Did you have anything to do with the proceedings  
16 over David's case in the Supreme Court of Canada  
17 in 1992?

18 A No.

19 Q Umm, no one from the police or the Department of  
01:32 20 Justice, or indeed Saskatchewan Justice,  
21 approached you to interview you; is that right?

22 A No they didn't.

23 Q And you didn't speak to the RCMP, either, when  
24 they did an investigation in 1993; is that right?

01:33 25 A No I didn't.



1 Q So would I be right in saying, then, that the  
2 first time you spoke to any police or prosecutor  
3 was probably in 1999, around the time of Larry  
4 Fisher's trial?

01:33 5 A That's correct.

6 Q And who approached you then; was it police first?

7 A No.

8 Q Who was first?

9 A I don't recall his name at the moment.

01:33 10 Q I don't -- sorry, it's not so much name, but do  
11 you know what he did for a living; was he a police  
12 officer or a prosecutor or something else?

13 A Some kind of prosecutor or Crown attorney.

14 Q All right. Okay. And he -- he spoke to you and  
01:33 15 interviewed you; did he?

16 A He just talked to me over the phone.

17 Q All right. And, between then and when you  
18 testified at Larry Fisher's trial, did anyone else  
19 speak to you or interview you from the police or  
01:34 20 prosecutor's office?

21 A No, just to say that I had to go to trial.

22 Q All right.

23 A And I don't recall who they were.

24 Q Has -- has anyone from the prosecution, from the  
01:34 25 Attorney General's office, Department of Justice,



1 or any police force, ever tried to explain to you  
2 why it was almost 20 years before you found out  
3 about Larry Fisher?

4 A No.

01:34 5 Q Not even to this day?

6 A No.

7 Q Have they ever sat down and have they even -- have  
8 they ever met with you face to face to talk about  
9 it? Have they ever asked to meet with you face to  
01:35 10 face to talk about it?

11 A Who is it that you are talking about?

12 Q Police, prosecutors, Attorney General of  
13 Saskatchewan?

14 A No.

01:35 15 Q Department of Justice in Ottawa?

16 A No.

17 Q No one? So it sort of goes without saying I would  
18 think -- and maybe I'm wrong -- but am I right,  
19 then, that there's never been an apology to you  
01:35 20 for those years?

21 A That's right.

22 Q Do you think they owe you one?

23 COMMISSIONER MacCALLUM: Mr. Lockyer,  
24 please, what's -- where is the relevance?

01:35 25 MR. LOCKYER: Oh, Mr. Commissioner, the





1 issue of apologies in these kinds of cases, both  
2 to victims and to people wrongly convicted, is a  
3 crucial issue that was -- that's been examined at  
4 previous inquiries, and in my submission --

01:35 5 COMMISSIONER MacCALLUM: I'm sure -- I'm  
6 sorry, go ahead, I don't want to interrupt you.

7 MR. LOCKYER: I'm sorry, can I proceed?

8 COMMISSIONER MacCALLUM: No, I was just  
9 waiting for you to finish your sentence, that's  
01:36 10 all. I'm sure it's an extremely important matter  
11 --

12 MR. LOCKYER: Yes?

13 COMMISSIONER MacCALLUM: -- in terms of the  
14 relation between victims and authorities, but in  
01:36 15 terms of our terms of rel -- dealing with our --  
16 the relevance in this particular case is what  
17 I'm --

18 MR. LOCKYER: Well I'm hoping,  
19 Mr. Commissioner -- and, you know, I hate to go  
01:36 20 on my previous experience of inquiries but it has  
21 happened at previous inquiries that I have been  
22 involved in, and there have been important  
23 moments where authorities have decided to make  
24 public apologies to people who were affected by  
01:36 25 mistakes, wrong decisions, whatever they may have



1           been, in the past during these types of cases,  
2           and I'm hoping that if (V1)----, having said she  
3           has never received an apology -- and I think I  
4           detected in the way she responded to the question  
01:37 5           that she is not pleased that she hasn't -- that  
6           it may inspire parties to this Inquiry to do just  
7           that at some point during the course of this  
8           Inquiry. That's the purpose of the questioning  
9           and that's, in my submission, an important  
01:37 10          purpose or important aspect of this Inquiry --

11                   COMMISSIONER MacCALLUM: Well --

12                   MR. LOCKYER: -- if, indeed, such apologies  
13                   are forthcoming.

14                   COMMISSIONER MacCALLUM: Insofar as  
01:37 15          (V1)---- is concerned, of course her matter is  
16          clearly collateral to the Milgaard matter and to  
17          the Inquiry and to his wrongful conviction, and  
18          so far as any apologies to Mr. Milgaard or his  
19          family are concerned arising out of this Inquiry,  
01:37 20          I understand that those apologies have already  
21          been made.

22                   MR. LOCKYER: Well they have been made by  
23                   some parties, but right now we're dealing with  
24                   (V1)----, that it might be of considerable  
01:38 25          assistance to her -- she may say otherwise, I



1 don't know, --

2 COMMISSIONER MacCALLUM: Well let's --

3 MR. LOCKYER: -- but it might be of  
4 considerable assistance to her if there was a  
01:38 5 public apology by, say, the Saskatoon Police  
6 Service for what they put her through for all  
7 those years.

8 COMMISSIONER MacCALLUM: Well, they can  
9 make such an apology on their own account, but I  
01:38 10 don't consider it to be relevant here.

11 MR. LOCKYER: Because it was my last, so  
12 you know, my last question of this witness was  
13 whether she would appreciate such an apology.

14 COMMISSIONER MacCALLUM: That is equally  
01:38 15 irrelevant, sir.

16 MR. LOCKYER: All right. Well that was to  
17 be my last question.

18 COMMISSIONER MacCALLUM: Thank you very  
19 much.

01:38 20 MR. LOCKYER: Thank you very much, ma'am.

21 MR. GIBSON: Mr. Commissioner, I have a  
22 follow-up question arising from a question from  
23 Mr. Lockyer, and it has to do with contact with  
24 the RCMP, and I just want to clarify the record,  
01:39 25 because it appears the answer given to Mr. Hodson



1           was different than the answer given to  
2           Mr. Lockyer.

3                   COMMISSIONER MacCALLUM:   Okay.

4           **BY MR. GIBSON:**

01:39 5           **Q**       (V1)----, my name is Bruce Gibson, I'm acting as  
6           the lawyer for the RCMP in this Inquiry.

7                   And I don't know if you heard  
8           the portion that I just referenced to the  
9           Commissioner, but it just -- I'm just trying to  
01:39 10          clarify the record with respect to what contact  
11          you may have had with the police. And would I be  
12          correct in assuming -- and, again, please give the  
13          most accurate information that you can -- I  
14          believe you said to Mr. Hodson that you didn't  
01:39 15          recall being contacted by the RCMP in 1993; is  
16          that correct?

17          **A**       That's right.

18          **Q**       And I believe you told Mr. Lockyer, just now, that  
19          you had not been contacted by the RCMP in 1993;  
01:39 20          now is it that you were not contacted or that you  
21          cannot recall?

22          **A**       I don't recall.

23          **Q**       Okay. I'm wondering, if we put up a document, can  
24          the witness see that document then?

01:40 25                   MR. HODSON:   Yes.



1 BY MR. GIBSON:

2 Q That's the document, 254882, please. Now,  
3 (V1)----, the document that's in front of you, I'm  
4 sure that you have not seen this document unless  
01:40 5 you went through it with Mr. Hodson, but this is  
6 an RCMP continuation report. And what it  
7 basically is, is when RCMP officers are doing an  
8 investigation they do ongoing notes with respect  
9 to contact with people that they have had. So I'm  
01:40 10 going to read some portions of this document to  
11 you and I'm hopeful that that will assist you in  
12 trying to recall what appears to be a date of  
13 April 22nd, 1993. Okay? So I'll go through that  
14 with you, and if at any time you are not clear,  
01:40 15 please just stop me and I will go over other  
16 points with you again:

17 "The following is an update to file  
18 93-402. It is requested that a copy of  
19 this update be applied to the following  
01:41 20 files, which also relate to (V1)-:"

21 Next paragraph:

22 "(V1)----- (nee (V1)-) was determined  
23 to be living in Calgary, Alberta, where  
24 she is apparently residing with a  
01:41 25 (Redacted). Phone number,



1 (Redacted)."

2 (V1)----, do you recall residing in Calgary in  
3 1993 with a (Redacted)?

4 A Yes I do.

5 Q And is that your telephone number there, or can  
6 you remember your telephone number at the time?

7 A Yes, it is.

8 Q And it goes on to say it:

9 "On 93-04-25 I contacted (V1)- by phone  
10 ...",

11 and the officer that is making this note is a  
12 Constable Jorgenson; does that name ring a bell  
13 you at all?

14 A No it doesn't.

01:41 15 Q Okay. It says:

16 "... I contacted (V1)- by phone, via the  
17 noted telephone number, as I was in the  
18 process of trying to set up our  
19 interviews to be done in Calgary.

01:42 20 Members were planning to be in Calgary  
21 the week of the 19th of April. In  
22 speaking with (V1)-, she stated that she  
23 was not really sure that she wanted to  
24 see us. It was a long time ago. A part  
01:42 25 of her past. At one point she was



1 willing to meet with us, if she had to.  
2 I made it clear to her what it is that  
3 we are doing. That it is not our  
4 intention to make her life difficult.  
01:42 5 That it was basically a matter of seeing  
6 her to see if she can assist us in what  
7 we are doing. If she can't. That's  
8 fine. At one point it appeared that  
9 there would be problem in our seeing  
01:42 10 her."

11 Do you recall, at all, any discussion along that  
12 line, then, with the RCMP about them doing an  
13 investigation and whether you would be willing to  
14 take some time and chat with them?

01:42 15 A No, I'm sorry, I don't.

16 Q Okay. But is it possible, then, that you did go  
17 on to tell the police that you just didn't feel  
18 like you wanted to see them and, at the end of the  
19 day, decided to not speak with the RCMP?

01:42 20 A I don't recall talking to them.

21 Q Okay. Is it possible that you did and you simply  
22 don't recall all of the contacts that you may have  
23 had with the RCMP or other police agencies?

24 A Possible.

01:43 25 Q Okay. Thank you for your time.



1 MR. HODSON: I believe those are all the  
2 questions, and if I may, (V1)----, on behalf of  
3 the Commission, thank you for your co-operation  
4 with me and with our staff, and for coming here  
01:43 5 today.

6 A Thank you. You are welcome.

7 COMMISSIONER MacCALLUM: Thank you,  
8 (V1)----, you are excused.

9 MR. HODSON: Mr. Commissioner, I would  
01:43 10 suggest that we adjourn for about 15 minutes, I  
11 have got our next witness come at 2:00, I  
12 believe, it may be a bit later but I'll try and  
13 get it for 2:00, set up.

14 COMMISSIONER MacCALLUM: That will be fine,  
01:44 15 sure.

16 *(Adjourned at 1:43 p.m.)*

17 *(Reconvened at 2:10 p.m.)*

18 MR. HODSON: Mr. Commissioner, before we  
19 start with our next witness, I'm advised that  
02:10 20 both Mr. Elson and Mr. Lockyer wish to just  
21 address you on a point that came out of the last  
22 witness' evidence and I believe Mr. Elson is  
23 going to go first.

24 MR. ELSON: Yes, Mr. Commissioner. I  
02:10 25 didn't want to prolong the matter at the time





1           that the last witness was testifying and I didn't  
2           want to state an objection while she was on the  
3           stand. I was hoping to have an opportunity to  
4           perhaps speak with you during the break, speak  
02:10 5           obviously publicly with you during the break and  
6           to make a submission.

7                        I was very thankful for the  
8           Commissioner's comments with respect to  
9           Mr. Lockyer's questions in regard to an apology  
02:10 10          and I just simply wanted to drive the point home  
11          insofar as the Saskatoon Police Service is  
12          concerned.

13                       One of the issues that came up  
14          in the cross-examination, or two of the issues  
02:10 15          that came up were the issue about an explanation  
16          and the issue of an apology. I won't speak to  
17          the issue of the apology because I believe that  
18          Your Lordship's ruling in this respect covers  
19          that off.

02:11 20                       With respect to the  
21          explanation, there is an explanation as to why  
22          the individuals in question were not notified of  
23          Mr. Fisher's conviction and that explanation is  
24          relevant to this Commission of Inquiry insofar as  
02:11 25          it may or may not intersect or deal with the



1           circumstances under which the Fisher  
2           investigation intersected with the investigation  
3           of the murder of Gail Miller and also perhaps  
4           intersected with the possible review of Mr.  
02:11 5           Milgaard's conviction.

6                       Having said that, the  
7           explanation for that is to come from witnesses  
8           other than the witnesses we will be hearing from  
9           this week and the question as to whether there is  
02:11 10          an explanation, whether there ought to be an  
11          explanation or whether the explanation was given  
12          to these people, with all due respect, is not  
13          something, we submit, that would come from the  
14          witnesses who are being presented this week.

02:12 15                       I wanted to speak to the  
16          Commissioner and to the Commission on this  
17          particular point in case it should come up again  
18          in the cross-examination of the other witnesses  
19          that are scheduled to testify. I believe  
02:12 20          Mr. Lockyer wishes to revisit this, but I just  
21          simply wanted to advance to the Commission our  
22          views on this particular point.

23                       COMMISSIONER MacCALLUM: Thanks, Mr. Elson.  
24                       Mr. Lockyer?

02:12 25                       MR. LOCKYER: Mr. Commissioner, I was not



1 expecting you to have difficulty with the  
2 questions that I was asking and consequently  
3 hadn't really prepared my mind for what I might  
4 call a satisfactory argument about the questions  
02:12 5 and I will, with your permission, attempt to do  
6 that now. I've been thinking about it throughout  
7 the break and I would like to address you further  
8 on the issue if I may, and I'll still be  
9 comparatively brief and this is the way I would  
02:13 10 like to put it: That the concealment of the  
11 crimes perpetrated on these ladies was, first of  
12 all, a crucial factor in Mr. Milgaard's wrongful  
13 conviction; that the concealment of the crimes  
14 that was perpetrated on these ladies was, as  
02:13 15 well, a crucial factor in Larry Fisher getting  
16 away with murder for 28 years; the concealment of  
17 the crimes perpetrated on these ladies was a  
18 crucial factor in the continuation of David  
19 Milgaard's wrongful conviction for 23 years; and  
02:13 20 it was the exposure of the crimes that were  
21 perpetrated on these ladies which resulted in  
22 David Milgaard's eventual release, his ultimate  
23 exoneration and the successful prosecution and  
24 conviction of Larry Fisher.

02:14 25 It is, therefore, firstly, I



1 hope I can satisfy you, a highly significant  
2 issue to this inquiry, that it wasn't until 1990,  
3 and I think you'll hear actually as a result of  
4 an anonymous phone call, that Larry Fisher's  
02:14 5 existence became known to David Milgaard's  
6 counsel Hersh Wolch.

7 Now, as I understand it, the  
8 authorities will say, when the time comes, that  
9 there is an explanation, it's a mixture of  
02:14 10 policy, changed policies, crossed wires, errors,  
11 non-communication, that's the kind of explanation  
12 that I anticipate you will hear from the  
13 authorities which we -- I say we -- which I, on  
14 behalf of Mrs. Milgaard, and Mr. Wolch on before  
02:15 15 of Mr. Milgaard, and there may be other counsel,  
16 may question and challenge, but what they will  
17 not claim is that the ladies should not have been  
18 notified of the apprehension, confession and  
19 conviction of Larry Fisher for their crimes.  
02:15 20 That will not be a claim, as I understand it,  
21 made by any of the parties here, that they acted  
22 correctly in not notifying.

23 So in those circumstances, if  
24 we can safely assume that, and we can, I'm sure,  
02:15 25 safely assume that, then this Commission also in



1 my submission should consider the relevance of  
2 the ensuing 15 years since it became known what  
3 Larry Fisher had done in 1990 to all parties and  
4 the failure on the part of any authority to  
02:16 5 explain or apologize to any of these ladies for  
6 what happened to them for those 19 years that  
7 they went through without knowing that their  
8 assailant had been apprehended. It's in the  
9 materials before you, Mr. Commissioner, how they  
02:16 10 have said how they felt as a consequence of what  
11 happened to them for those 19 years, the kinds of  
12 fears that they felt because they didn't know  
13 that the person had been identified and  
14 apprehended and the fact that they didn't know  
02:16 15 that, the consequences of that on their psyches,  
16 if I can put it that way.

17 Now, we haven't asked them  
18 those questions, we haven't brought that out of  
19 them, but it's in the materials, the written  
02:17 20 terms before you and I'm sure takes no great,  
21 there's no great mystery to how they would have  
22 reacted not thinking that the perpetrators, or  
23 the perpetrator of their crimes had ever been  
24 apprehended, and in my submission, then, that  
02:17 25 failure to apologize and that failure to explain,



1 both, for those 15 years, is indicative of an  
2 attitude on the part of those parties whom one  
3 might have expected would have apologized and  
4 would have explained to these ladies how those 19  
02:17 5 years went by in the way they did.

6 Indeed now it's 34 years that  
7 have gone by up to 2005, they still received no  
8 explanation and they still received no apologies,  
9 because there are a number of authorities that  
02:17 10 one might have expected or thought could have  
11 done this ranging from the federal Department of  
12 Justice, particularly when they were involved in  
13 the applications being brought by Mr. Milgaard  
14 under Section 690 of the *Criminal Code*, obviously  
02:18 15 the Saskatoon police, as well the RCMP in 1993.

16 Now, we've heard that (V1)----  
17 chose not to speak to them and that's fine, but  
18 the next witness, that's not the case, she did  
19 speak to them, and as well in 1999 at the time  
02:18 20 they would have encountered them at Larry  
21 Fisher's trial and again now in anticipation of  
22 this inquiry. That failure, in my submission, to  
23 apologize or explain to them how these events  
24 transpired or to apologize for these events is  
02:18 25 indicative, I suggest, of an attitude, of an



1 overall attitude to this inquiry on the part of  
2 parties who have been granted standing, both  
3 institutional and individual parties who have  
4 been granted standing, but particularly focusing  
02:19 5 on the institutions at this point.

6 As well, in my submission, it  
7 may be, and it's not for me to say because I  
8 haven't been a victim of any of these assaults,  
9 but it may be cathartic for these ladies if that  
02:19 10 were to happen, and surely if it would be of  
11 assistance to them and they were to say that  
12 here -- if my last question, for example, of  
13 Mrs. (V1)- had been answered, if she said yes,  
14 she would appreciate an apology, then one would  
02:19 15 expect that likely the appropriate institutions,  
16 individuals and parties would respond  
17 accordingly. Maybe, maybe not, but hopefully  
18 they would.

19 And a public inquiry, in my  
02:20 20 submission, is the right place for that kind of  
21 inquiry and for that kind of event to take place.  
22 A public inquiry is, above all, designed to serve  
23 the interests of the public and the public would  
24 view this Commission in my submission as having  
02:20 25 served a tremendous public interest if it were to



1 do something that may assist the ladies who were  
2 the victims of Larry Fisher so many years ago,  
3 the public would welcome it, would encourage it  
4 and indeed would urge it in my submission, and  
02:20 5 that's what this is, a public inquiry designed  
6 above all for the public interest.

7 And I do apologize for  
8 reverting back to involvement in previous  
9 inquiries, but I have some experience, and  
02:21 10 certainly at the inquiry into Guy Paul Morin's  
11 wrongful conviction, I can tell you,  
12 Mr. Commissioner, that Commission Counsel and the  
13 Commissioner publicly throughout the inquiry  
14 counseled this kind of apology if they thought it  
02:21 15 would be helpful to the parties and to the public  
16 interest and it bred some extraordinary results,  
17 Mr. Commissioner.

18 The one that most comes to my  
19 mind was when the chief of the Durham police  
02:21 20 service called a press conference with the  
21 Jessops on one side, indeed they weren't even on  
22 one side, and Guy Paul Morin on the other, and  
23 his family on the other, they were all together  
24 as a group and they held a press conference  
02:21 25 together where the Durham police chief





1           essentially responded to what the Commission had  
2           been urging, and particularly through Commission  
3           Counsel, but as well through the Commissioner,  
4           and that public apology was forthcoming and was  
02:22 5           highly cathartic, and not just for the Jessops  
6           and the Morins, but for all of us, there were a  
7           lot of tears shed that day, I remember it well,  
8           and in my submission it would serve this inquiry  
9           well if that kind of event was encouraged at this  
02:22 10          inquiry because I don't think anyone in this  
11          room, maybe I shouldn't say that, I've been  
12          criticized for that before, but I think the  
13          majority of people watching this would say to  
14          themselves that such an event would be good for  
02:22 15          the people involved, be good for all of us in  
16          this room.

17                        It's not designed to humiliate  
18           anyone, what I'm seeking here -- at all, not at  
19           all, that's not my nature in these kinds of  
02:22 20          inquiries -- it's cathartic, it's to help, and it  
21          would be a tremendous event as well for the  
22          public to see the kind of good that this inquiry  
23          can do in such a seemingly simple way, and in my  
24          submission, therefore, I urge you,  
02:23 25          Mr. Commissioner, I don't see a need to ask these



1 questions myself, I would be as happy if  
2 Commission Counsel ask them rather than me, but  
3 in my submission they are questions that are  
4 relevant, that the legalistic sense, in the  
02:23 5 legalistic sense are relevant to the attitude, to  
6 the credibility, to the conduct to so many of the  
7 parties involved, but as well relevant to the  
8 public issues that this inquiry addresses in a  
9 public forum and for all those, for both those  
02:23 10 reasons, but really for all those reasons in my  
11 submission I would ask you, Mr. Commissioner, to  
12 reconsider your decision. Thank you.

13 COMMISSIONER MacCALLUM: Thank you. Yes,  
14 Mr. Fox? I would ask you all to bear in mind the  
02:24 15 fact that we're keeping a witness waiting.

16 MR. FOX: I appreciate that,  
17 Mr. Commission, I apologize for this, but having  
18 said that, this is an issue which has come up  
19 repeatedly throughout these proceedings and it's  
02:24 20 obviously going to come up again.

21 I have a great deal of  
22 difficulty following exactly what the submission  
23 was there other than final argument. I don't  
24 think it has anything to do, frankly, with what  
02:24 25 we're here before. My experience is in a



1 courtroom, I have limited experience in  
2 commissions of inquiry, but in any hearing that  
3 I've been involved in, whether a commission of  
4 inquiry or a courtroom, whether it's civil or  
02:24 5 criminal or a disciplinary hearing or whatever,  
6 the basic procedure is pretty much the same, you  
7 listen to the evidence, you hear the argument,  
8 you make a determination.

9 Witness after witness we've  
02:25 10 heard argument presented in a form of questioning  
11 and now in the form of an objection. I have  
12 difficulty, for example, with it being a stated  
13 fact that the knowledge of this, or the fact of  
14 these -- Larry Fisher pleading guilty to these  
02:25 15 offences was concealed. It's put forward before  
16 you, Mr. Commissioner, as a stated fact without  
17 having heard from one single police witness,  
18 without having heard from one single Department  
19 of Justice witness, none of those people have had  
02:25 20 a chance to testify and it's put forward as a  
21 stated fact. It's particularly difficult to  
22 accept that fact when it's being put forward by  
23 the particular party who's doing it.

24 All I'm saying, Mr.  
02:25 25 Commissioner, is that if every time we have a



1 witness on the stand and every time there's an  
2 objection it's being used as an opportunity to  
3 put forward final argument, we'll be here for a  
4 couple more years.

02:25 5 That's my submission. Thank  
6 you.

7 COMMISSIONER MacCALLUM: Thanks. It has  
8 been suggested in the examination of the last  
9 witness that she would probably like an apology  
02:26 10 for not having been informed by the police until  
11 perhaps 20 years after the event that someone had  
12 indeed been responsible for her attack and had  
13 been convicted for it. I have disallowed the  
14 question on the basis of relevance and I have now  
02:26 15 heard submissions from both Mr. Lockyer to whom  
16 the, who made the initial request to the question  
17 in that way and from other counsel acting for the  
18 city police and for the RCMP.

19 To begin with, Mr. Elson, for  
02:26 20 the Saskatoon City Police, agreed with the  
21 determination I had made and had nothing to add  
22 in respect to the desired apology. He pointed  
23 out that there is an explanation in his view why  
24 the individuals were not notified and that it  
02:27 25 will come in due course through other witnesses



1 if indeed it is judged to be relevant at the  
2 time.

3 Mr. Lockyer readdressed the  
4 question saying, to begin with, that the  
02:27 5 concealment of the crimes against these ladies  
6 was a crucial factor in the Milgaard affair  
7 generally, the exposure of the crimes led to Mr.  
8 Milgaard's release and to Fisher's conviction.  
9 He says as far as he is concerned the authorities  
02:27 10 will not claim that the victims should not have  
11 been notified, but that the explanation that he  
12 anticipates will be less than satisfactory, that  
13 the failure to apologize or explain to the  
14 victims aside from the consequences for them and  
02:28 15 in addition to that personal matter indicates an  
16 attitude on the part of the police which is  
17 reflected in this inquiry.

18 He said that it could be  
19 cathartic to the ladies to hear an apology made  
02:28 20 by the people responsible for not having informed  
21 them earlier in a timely way of who it was that  
22 had attacked them and what were the consequences  
23 of his court proceedings. Mr. Lockyer urges me  
24 to adopt, I suppose, a very wide and generous  
02:28 25 approach to the interpretation of the terms of



1 reference in this inquiry and to serve a laudable  
2 public objective of offering to the women  
3 involved in Larry Fisher's crimes an acknowledge  
4 of the suffering they've gone through as well as  
02:29 5 an apology. He points out to me that other  
6 inquiries have taken a similar view with regard  
7 to making apologies, although the case he points  
8 out to me, as I understand it, it was an apology  
9 which took place between the immediate parties to  
02:29 10 the inquiry and not third parties as we have  
11 here.

12 I am not inclined, Mr. Lockyer,  
13 to vary the spirit of my previous ruling. The  
14 concealment of the crimes, if it be that against  
02:29 15 the Fisher victims, is something as yet unproved  
16 in my view. It will take more than a recitation  
17 of the words "concealment" to convince me that  
18 that took place. Of course their prosecution was  
19 a public, is a matter of public record. Whether  
02:30 20 or not it was timely and whether or not it should  
21 have related right away to the Milgaard matter is  
22 one of the chief inquiries we have before us of  
23 course, but I lack any evidence to adopt any such  
24 description of what the police did at this stage  
02:30 25 as concealment.



1                   As much as we all sympathize  
2                   with the victims of the Fisher crimes, I must  
3                   repeat myself to this extent, that they are, on  
4                   the face of it, a collateral matter to the  
5                   Milgaard inquiry and Mr. Milgaard's wrongful  
6                   conviction. They might touch of course upon the  
7                   quality of the investigation and upon whether it  
8                   should have been reopened earlier, but all I need  
9                   to know for the moment in that connection and in  
10                  the connection which most concerns Mr. Lockyer is  
11                  whether the victims of Larry Fisher were  
12                  notified. If they were not notified, then I  
13                  trust that we will hear from the appropriate  
14                  authorities why they were not notified. We will  
15                  not, I'm not interested in hearing that from  
16                  these women and while I might be interested in  
17                  their personal distress, and obviously we are or  
18                  we wouldn't be taking all these precautions to  
19                  receive their evidence, now is neither the  
20                  time -- this is neither the time nor the place to  
21                  seek redress for them for any perceived  
22                  wrongdoing on the part of the authorities in  
23                  communication matters surrounding the Fisher  
24                  crimes.

25                   While other inquiries might



1 have gone further afield, I'm not sure that they  
2 have, there is a need to be focused here as I'm  
3 sure everyone will agree. We are going to  
4 extraordinary lengths to be thorough in the  
02:32 5 matter of the wrongful conviction of David  
6 Milgaard. This matter has been gone over and  
7 over and over in all kinds of different forums  
8 and perhaps the worst mistake we could make would  
9 be to be less than thorough because there's  
02:32 10 little point to this inquiry if it does not  
11 consider every available bit of evidence and, as  
12 we all know, we're in the throes of doing that,  
13 but that is no reason to expand our inquiries  
14 beyond the reference points set out in the terms  
02:32 15 of reference.

16 And as I have said to  
17 Mr. Lockyer initially, I believe that the focus  
18 of his inquiry regarding an apology for the  
19 victims of the Fisher attacks is irrelevant. I  
02:33 20 say no more than that. There will be an  
21 explanation offered I suppose, perhaps not, but  
22 if it is, we can address relevance of that if and  
23 when it arises.

24 Finally, Mr. Fox has expressed  
02:33 25 his frustration at what he perceives to be, I





1 take it, the presentation of argument under the  
2 guise of cross-examination and there certainly  
3 has been some of that to date. I don't expect  
4 that there will be as much from now on having  
02:33 5 regard to the nature of the evidence that we will  
6 hear. Counsel should of course avoid  
7 gratuitously entering into their  
8 cross-examination argument which would be better  
9 put at a different time and I hope that I won't  
02:34 10 find it necessary to tell them that in the  
11 future. We will see.

12 The witnesses we have heard so  
13 far are event witnesses and their testimony of  
14 course was at the very basis of this whole  
02:34 15 business, so I found it very difficult to be too  
16 strict about limiting the scope of  
17 cross-examination, but I might be stricter in the  
18 future.

19 Will you proceed, then, with  
02:34 20 your next witness, Mr. Hodson.

21 MR. HODSON: Thank you, Mr. Commissioner,  
22 and good afternoon, (V2)----- . My apologies  
23 for keeping you waiting. Have you been sworn?  
24 Is Irene there to swear the witness?

02:35 25 (V2)-----, sworn:



1 BY MR. HODSON:

2 Q Thank you, (V2)-----, for testifying before  
3 this Commission.

4 I understand that your maiden  
5 name is (V2)-----; is that correct?

6 A Yes, it is.

7 Q And that your date of birth is November  
8 (Redacted), 1951?

9 A Yes.

10 Q And that you are 53 years of age?

11 A Yes.

12 Q I'm going to ask you a few questions about, or  
13 related to a sexual assault that took place on  
14 November 14, 1968 where you were sexually  
15 assaulted. You remember that incident?

16 A Yes.

17 Q And at the time you were 16, almost 17 years of  
18 age; is that right?

19 A Yes.

20 COMMISSIONER MacCALLUM: What was the date?  
21 Sorry, Mr. Hodson.

22 MR. HODSON: The date is November 14th,  
23 1968.

24 COMMISSIONER MacCALLUM: Thanks.

25 BY MR. HODSON:



1 Q And, (V2)-----, I want to just go through a quick  
2 chronology of your involvement in this matter and  
3 then I'll have some questions for you. I  
4 understand that you would have been interviewed by  
02:36 5 Saskatoon City Police officers at and around the  
6 time of the incident; is that right?

7 A Yes.

8 Q And that you would have given a statement to the  
9 police?

02:36 10 A Yes.

11 Q And that you would have some subsequent dealings  
12 with the police; is that right?

13 A Yes.

14 Q And at what point, (V2)-----, did you become aware  
02:36 15 that Larry Fisher had been convicted of sexually  
16 assaulting you?

17 A Not until I met Mrs. Milgaard.

18 Q And would that have been in or about 1990; does  
19 that sound right?

02:36 20 A Around there. '90, '91.

21 Q And I think actually you are right, I think it is  
22 1991. And were you interviewed by Mrs. Milgaard  
23 and an investigator with her?

24 A Yes, I was.

02:36 25 Q And was that Mr. Paul Henderson, does that name



1 sound familiar?

2 A Yes.

3 Q And then I understand in 1991 you had occasion to  
4 talk to Sergeant Pearson of the RCMP; is that  
02:37 5 right?

6 A Yes.

7 Q And that would have been in connection with Mr.  
8 Milgaard's application to review his conviction.  
9 Does that sound right?

02:37 10 A I believe so.

11 Q And then I believe in 1993 the RCMP interviewed  
12 you again in connection with an investigation. Do  
13 you remember that?

14 A Yes, I do.

02:37 15 Q And then as well you testified at the Larry Fisher  
16 trial at both the *voir dire* and at the trial; is  
17 that correct?

18 A Yes, I did.

19 Q If we can just go back to 1968. You had indicated  
02:37 20 that you gave the police a written statement and I  
21 would like to call that document up, it's 039935,  
22 and if we could go to the fourth page of that,  
23 039938, please, and is that your signature on the  
24 statement?

02:37 25 A Yes, it is.



1 Q And you've had an opportunity to review this  
2 statement prior to these proceedings; is that  
3 correct?

4 A Yes, I have.

02:38 5 Q And is the statement accurate based on your review  
6 of it?

7 A No.

8 Q I'm going to show you on page 4, if we could just  
9 call out the first two lines, please, and it says:  
02:38 10 "I would recognize this person if I saw  
11 him again."

12 And that's referring to the attacker. Is that  
13 the part of the statement that you take issue  
14 with?

02:38 15 A Yes, it is.

16 Q And why do you take issue with that?

17 A Because I would have never recognized him.

18 Q Now if we could just go back, I have some  
19 questions about your dealings with the police in  
02:38 20 1968 and 1969. Do you remember the names of the  
21 officers that you would have talked to at the  
22 time?

23 A The only one name I remember is Mackie.

24 Q Would that be Ray Mackie?

02:39 25 A I believe so.



1 Q And are you able to help us out with how  
2 frequently, on how many occasions would you have  
3 talked to the police at the time?

4 A It wasn't that much.

02:39 5 Q Are you able to estimate or do you recall?

6 A No, I don't.

7 Q And do you recall being shown photographs of  
8 potential suspects by the police?

9 A Yes.

02:39 10 Q And did that happen on more than one occasion?

11 A Maybe two or three times.

12 Q And were you able to identify anybody from those  
13 photographs?

14 A No, I couldn't.

02:39 15 Q Now if I could call up document 039527. And,  
16 (V2)-----, this is a newspaper article from The  
17 StarPhoenix December 14th, 1968, and I believe I  
18 showed this to you yesterday, talking about police  
19 warning about other assaults; do you recall  
02:40 20 whether you would have seen this article back at  
21 that time?

22 A No I don't.

23 Q Now back at the time of your assault were you  
24 aware, through any means, of any other assaults or  
02:40 25 sexual assaults that would have taken place in



1                   your neighbourhood?

2       A           No.

3       Q           Or in the city?

4       A           Not that I knew of.

02:40 5       Q           Now do you recall hearing about the Gail Miller  
6                   murder which was on January 31, 1969?

7       A           That I can't remember.

8       Q           I take it, at some point, you became aware of it;  
9                   is that right?

02:40 10      A           Oh, later on, yes.

11      Q           And when you say "later on" are we talking months,  
12                   years, are you able to help us out on that?

13      A           No, I can't.

14      Q           Do you recall any discussion with any police  
02:40 15                  officer, around the time of Gail Miller's murder,  
16                  about her murder or their investigation?

17      A           No.

18      Q           I'm going to call up document 106204, and this is  
19                   a police report dated February 4th, 1969 by  
02:41 20                  Sergeant Mackie, and if we could call up the last  
21                  paragraph. And this report says:

22                                "At 8:30 p.m., (V2)-----

23                                ...",

24                   your address:

02:41 25                                "... who had been a rape victim was



1 brought to the Morality Office where  
2 Morality Sergeant Oleksyn and myself  
3 showed her a group of photos which  
4 included two colour photographs which  
02:41 5 included the Canton brothers. Due to no  
6 identification being made of either of  
7 these men, Morality Officer Lindgren and  
8 Phillips were instructed to take this  
9 girl to the Identification Department  
02:42 10 where a composite photo was made up by  
11 her."

12 Do you recall meeting with the police and having  
13 a composite photo drawn up?

14 A No, I don't.

02:42 15 Q Or a sketch or anything of that nature?

16 A No I don't.

17 Q Okay. Would you tell us -- and, again, the date  
18 of your assault was on November 13th, 1968 -- are  
19 you able to tell us how long it was that you had  
02:42 20 contact with the city police in connection with  
21 that matter?

22 A I don't understand what you mean?

23 Q Okay. I'm wondering how many months after the  
24 incident do you recall talking to the police, are  
02:42 25 you able to tell us when, sort of; was it months,





1 years, weeks?

2 A Well, it wasn't years.

3 Q Do you know how long after the event, the assault,  
4 you would have had contact with the police?

02:42 5 A Not really.

6 Q Do you recall ever being told by the police that  
7 they may have a suspect?

8 A Nope.

9 Q Do you recall the names of any people that the  
02:42 10 police may have showed you photographs of?

11 A No I don't.

12 Q Okay. Now I'm going to call up -- or, actually,  
13 let me call up document 010733 please. And this  
14 is an information, (V2)-----, dated December 1970  
02:43 15 down in the bottom. If we could maybe just call  
16 that out, please. And this is a charge charging  
17 Larry Fisher with the sexual assault of you on  
18 November 13th, 1968, and the date of this is  
19 December '70, 1970. Were you aware back at that  
02:43 20 time, (V2)-----, that Mr. Fisher had been charged  
21 with the sexual assault of you?

22 A No.

23 Q Next I'm going to call up document 261053, and  
24 this is a letter dated March 17th, 1971, and if  
02:44 25 you could go to the next page. And in this



1 letter, (V2)-----, this is a letter from the  
2 police to the Deputy Attorney General and it  
3 relates to Mr. Fisher, and if you could just  
4 scroll up -- or I'm sorry, no, that's fine there.  
02:44 5 It says here:

6 "(V2)----- was unable to identify Fisher  
7 from Police photos as her assailant."  
8 Are you able to tell us whether or not the police  
9 showed you a picture of Larry Fisher?

02:44 10 A No, they never did.

11 Q And then if I could call up document 047041, and  
12 this is a conviction dated December 21, 1971, and  
13 in this document, (V2)-----, it indicates that on  
14 December 21, 1971 Larry Fisher was convicted to  
02:45 15 four years in jail concurrent to a sentence he was  
16 already serving for your assault; were you aware  
17 that Mr. Fisher was convicted at this time and  
18 received this sentence?

19 A No.

02:45 20 Q If you could tell us -- that's fine with that  
21 document -- when and how did you become aware that  
22 Larry Fisher had been the -- your assailant and  
23 had been convicted of sexually assaulting you?

24 A I already said, when I met Mrs. Milgaard.

02:45 25 Q And that would have been in the early '90s?



1 A Yes, '90-'91.

2 Q And what do you recall about this meeting?

3 A Umm, she was just asking questions, and then first  
4 thing she said that she told me -- asked me if I  
02:46 5 knew who the person was, and I told her I didn't,  
6 and then she told me who he was.

7 Q Okay. And were you upset at learning this  
8 information?

9 A Oh, yeah.

02:46 10 Q And why was that?

11 A Because I didn't think it was up to a total  
12 stranger. I figure that's what the police are  
13 for.

14 Q And did you answer questions for Mrs. Milgaard  
02:46 15 and/or her investigator?

16 A I believe so.

17 Q Now I would like to move ahead to 1991, and I'll  
18 just put up on the screen document 071267, and I  
19 don't propose to go through this but this is a  
02:47 20 statement of yours to Sergeant Pearson. And do  
21 you recall, I think you have told us you met with  
22 Sergeant Pearson, is that right?

23 A Yes I did.

24 Q And would you have told him the truth, at the  
02:47 25 time, to the best of your recollection?



1 A Yes.

2 Q And then again in 1993 you were interviewed by  
3 Corporal Templeton of the RCMP; is that right?

4 A Yes.

02:47 5 Q And would you have told him the truth, to the best  
6 of your recollection, at the time?

7 A Yes I did.

8 Q And I understand that you testified at Larry  
9 Fisher's trial, both at the voir dire and the  
02:47 10 trial; is that correct?

11 A Yes.

12 Q And did you tell your truth to the best of your  
13 ability and best of your recollection at that  
14 time?

02:47 15 A Yes I did.

16 Q Those are all the questions that I have for you,  
17 (V2)----- . Other counsel may have questions for  
18 you, if you want to just hold for a moment, yes.  
19 Aaron? Mr. Lockyer? Anybody else? I think  
02:48 20 Mr. Lockyer and Mr. Fox. Any desire as to who  
21 goes first?

22 I think they are both up, so  
23 there will be two, whoever -- I just ask counsel  
24 to identify themselves for the witness when --

02:48 25 **BY MR. FOX:**



1 Q Good afternoon, my name is Aaron Fox, I'm the  
2 lawyer for Eddie Karst who was a detective with  
3 the Saskatoon Police Service, and I don't think  
4 you have ever met him in your dealings with the  
02:48 5 police service. I just wanted to ask you a couple  
6 questions.

7 In terms of the photos that you  
8 were shown any idea how many photos, in total, you  
9 would have been shown --

02:48 10 A No.

11 Q -- by the police?

12 A No, sir.

13 Q And was there any indication of who those people  
14 were, in other words, any identification of, by  
02:48 15 way of name or background, of who those  
16 individuals were?

17 A No, I don't think so.

18 Q Okay. And in terms of, I take it from what you  
19 have said, you wouldn't have been able to identify  
02:49 20 your assailant in any event?

21 A No.

22 Q Okay. So the photos were a bit of a stretch to  
23 see if something might come up but, really, you  
24 didn't think you would be able to identify who the  
02:49 25 attacker was?



1 A That's right.

2 Q Okay. And do you know whether or not a photo of  
3 Larry Fisher was included in the collection that  
4 you saw?

02:49 5 A No.

6 Q So nobody told you Larry Fisher's photo was  
7 included, but it may have been, you just don't  
8 know one way or the other?

9 A That's true, it could have been.

02:49 10 Q Okay, thanks. Those are all the questions I have,  
11 thank you very much.

12 A You are welcome.

13 COMMISSIONER MacCALLUM: Mr. Lockyer?

14 BY MR. LOCKYER:

02:49 15 Q Yes, (V2)-----, I represent Mrs. Milgaard.

16 Umm, I just want to go through  
17 the authorities that you have spoken to since you  
18 met Mrs. Milgaard in 1991. Commission Counsel  
19 asked you about a meeting you had with an officer  
02:50 20 Pearson from the RCMP on December the 9th, 1991;  
21 do you remember that?

22 A Yes I do.

23 Q And did Officer Pearson provide you with any  
24 explanation for why you hadn't been told, back in  
02:50 25 1970-'71, that the culprit in your assault had



1           been apprehended?

2       A       No, nobody ever did.

3       Q       Did you have any involvement with anyone, any of  
4           the authorities, around the time of hearing of Mr.  
02:50 5           Milgaard's case in 1992 in the Supreme Court of  
6           Canada?

7       A       Not that I can remember.

8       Q       Okay. I think Commission Counsel also asked you  
9           about a meeting you had with an Officer Templeton  
02:51 10          of the RCMP which was on May the 28th of 1993 I  
11          believe; do you remember that?

12      A       Yes.

13      Q       And, once again, no explanation offered to you?

14      A       No.

02:51 15      Q       Did you ask them for one?

16      A       Of, like, of what?

17      Q       As to why it was 19, 20 years before you heard  
18           from Mrs. Milgaard about the fact that Larry  
19           Fisher had been the one who assaulted you?

02:51 20      A       Everybody I ask, they say the same thing, they  
21          don't have the answer.

22      Q       They don't have the answer. In 1999 you spoke to  
23           the police before you testified at Larry Fisher's  
24           trial; is that right?

02:51 25      A       Yes I did.



1 Q And we have a record; do you remember how often it  
2 was, was it once or more than once?

3 A Oh, it was more than once.

4 Q Yes? One we have a record of was on January the  
02:51 5 26th of 1999 you spoke to a P.C. Thompson; does  
6 that ring any bells?

7 A P.C. Thompson? I can't remember all the names of  
8 the people I spoke to.

9 Q That's at 080739. Umm, did you speak to the  
02:52 10 prosecutor of Larry Fisher as well?

11 A Yes.

12 Q Before, maybe even after, you testified at his  
13 trial?

14 A Before? Before, we did, --

02:52 15 Q Yes?

16 A -- and after.

17 Q And how long before, do you know, roughly five  
18 minutes, half an hour, an hour?

19 A Oh, I would say it was at least a half an hour, an  
02:52 20 hour.

21 Q At least half an hour or an hour?

22 A Yeah.

23 Q Was the police, then, or the prosecutor able to  
24 provide you with an explanation?

02:52 25 A Nope.





1 Q Did you ask them?

2 A Yes I did.

3 Q And they gave you the same answer; they don't know  
4 why?

02:52 5 A Over and over again it's the same answer, "we  
6 don't know", and I would like to know who does  
7 know.

8 Q And a last question, and I think this is a  
9 permissible question, Mr. Commissioner. Has -- of  
02:53 10 those people that you have spoken to in authority,  
11 police, be it Saskatoon Police -- I'm not sure if  
12 you have spoken to them but you have certainly  
13 spoken to the RCMP on more than one occasion --  
14 and the prosecutor of Larry Fisher; did any of  
02:53 15 them apologize to you?

16 A Not really.

17 Q All right. Thank you. That's all.

18 A You're welcome.

19 MR. HODSON: Those are all the questions.  
02:53 20 And if I may, (V2)-----, on behalf of the  
21 Commission, and on my behalf, thank you and your  
22 family for your co-operation and courtesy in  
23 dealing with me and our staff, and for agreeing  
24 to come here today to testify.

02:53 25 A You are welcome.



1 COMMISSIONER MacCALLUM: Thank you. That's  
2 all, (V2)-----.

3 MR. HODSON: We are done for the afternoon,  
4 Mr. Commissioner, the next witness is here  
02:54 5 tomorrow morning at 9:00 a.m.

6 COMMISSIONER MacCALLUM: Thank you.

7 MR. HODSON: and we'll have two witnesses  
8 tomorrow.

9 COMMISSIONER MacCALLUM: Okay.

02:54 10 (*Adjourned at 2:54 p.m.*)

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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
Official Queen's Bench Court Reporters for the Province of  
Saskatchewan, hereby certify that the foregoing pages  
contain a true and correct transcription of our shorthand  
notes taken herein to the best of our knowledge, skill,  
and ability.

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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