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David Milgaard and his mother, Joyce, express gratitude yesterday at a Manitoba prison news conference that his 22-year fight to prove he was wrongly convicted of a Saskatoon sex slaying has reached the Supreme Court of Canada.

(BRUCE RAPINCHUK/Canadian Press)

Saskatchewan to oppose bail in Milgaard review

'Everybody's happy, but I still have to go back to my cage,' he says

BY TIMOTHY APPLEBY
and DAVID ROBERTS
The Globe and Mail

Freedom for David Milgaard does not appear imminent, despite federal Justice Minister Kim Campbell's decision to reverse her earlier position and refer the case of Canada's most famous prisoner to the Supreme Court of Canada for review.

"Everybody's happy, but I still have to go back to my cage," an otherwise cheerful Mr. Milgaard said at a news conference at the Rockwood minimum-security prison farm, north of Winnipeg, as Ms. Campbell's decision was officially announced.

"Yes, we will oppose bail," said Murray Brown, Saskatchewan's di-

rector of appeals. "The decision of the Supreme Court will not settle anything. In my view, there's nobody in authority to grant David Milgaard bail at this point. And there's no reason to release him. He's still convicted and he's still a sentenced prisoner."

Although Mr. Milgaard has received occasional day passes — including one yesterday, which he used to attend a boisterous party at his lawyers' Winnipeg offices — release in the form of either bail or parole is not on the horizon because the Supreme Court of Canada hearing requested by Ms. Campbell is neither a new trial nor an appeal.

Rather, the court is simply being asked a question: Has there been a

miscarriage of justice in the 1969 sex slaying of Saskatoon nurse's aide Gail Miller, for which Mr. Milgaard has been imprisoned more than 22 years? If there has, Ms. Campbell asks the court in a corollary question what the remedy should be.

"The first thing I want to do is thank God," Mr. Milgaard said as his family and supporters clustered around him in the prison chapel. "I'm so happy and grateful."

"Although the decision's good, they haven't made that [his release] possible. If I'm not home for Christmas, I'll probably run home for Christmas."

"Oh no you won't," said his mother, Joyce, possibly mindful of her son's two prison escapes.

Ms. Campbell, in outlining her decision to reporters in Toronto yesterday, said that after receiving the opinion of the Supreme Court, which will conduct an extensive, public examination of the entire case, "I will make the [final] decision."

However, she added that while she is still undecided on Mr. Milgaard's guilt or innocence, some of the evidence that has prompted the court referral is "compelling."

The minister also made it clear she would likely follow the court's recommendations.

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Milgaard 'so happy and grateful' for review

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"I am not seeking the advice of the Supreme Court not to follow it."

In addressing what has become the most contentious case within her purview, Ms. Campbell said her decision to reopen it was not affected by the intense media scrutiny or by Prime Minister Brian Mulroney, who has shown interest in the case.

This was the second effort by Mr. Milgaard's lawyers to obtain a review of his conviction, which can be re-examined under a special provision of the Criminal Code. The first request was turned down by Ms. Campbell in February after an investigation by Justice Department officials. In a 12-page letter to Mr. Milgaard's lawyers, she said "the verdict of the jury was fair and justified."

Since then, fresh evidence has turned up a wealth of circumstances pointing to another man as Ms. Miller's likely killer — an imprisoned serial rapist. The information was chiefly gathered by a U.S. organization called Centurion Ministries, a group devoted to freeing

prisoners believed to be innocent.

Referring to the first Justice Department investigation, Ms. Campbell said yesterday: "I'm not going to get into questions that will be the subject of the court. I simply want to say I have no reason to say I have anything but the highest confidence in the quality of work that's been done by the Department of Justice."

As well, she said, "I may not publicly address the issues that have been raised in this case. I am not free to do that."

Mr. Milgaard, 39, will testify at the public Supreme Court hearing. The court's broad mandate will allow it to examine every aspect of the case, including evidence that would not be normally admissible in a court of law.

Mr. Milgaard was convicted largely on the basis of statements to police, some of which have been retracted. Questions have also been raised about physical evidence linking him to the crime, and some police records have disappeared.

No date has been set for the Supreme Court hearing, which is unlikely to begin before the New Year.

"The second submission [from Mr. Milgaard's lawyers] raises very difficult questions," Ms. Campbell said. "At the same time, other evidence has come forward which is not in the public domain. This [the hearing] is a device for putting all that's before me in the public domain."

Mr. Milgaard and his lawyers lauded Ms. Campbell's "courage" in reopening the case and Mr. Mulroney's "incredible gesture" in speaking to Mr. Milgaard's mother when they met briefly in Winnipeg in September.

"It was a tangible ray of hope — something the Milgaard family hasn't had a great deal of in the past 22 years and I think the Prime Minister deserves full credit," lawyer David Asper said.

His colleague, Hersh Wolch, whose firm has led the legal battle to free Mr. Milgaard, praised the broad parameters of the impending review.

"Those who drafted it should be congratulated for the scope of it," he said. "It's been worded rather well. It's so hard to draft one of these things."

"I just want to get this into the Su-

preme Court and get David vindicated."

Mr. Asper and Mr. Wolch expressed hope that their client could be freed through a "common law" bail application or a National Parole Board release.

However, no new formal parole hearing is scheduled until 1993.

It is clear, nonetheless, that Mr. Milgaard is being slowly eased out of the harsh regime of maximum-security imprisonment.

A spokesman for the parole board, Clarence Roussel, said yesterday Mr. Milgaard applied to the federal cabinet for an unconditional pardon two months ago.

The board denied him full parole on Oct. 31, but granted him occasional escorted day passes. He has been eligible for full parole since 1976, seven years after his arrest, but has been severely hampered by his defiance of authorities.

Yesterday, he expressed gratitude to the supporters who joined him at Rockwood.

"From the bottom of our hearts, thank you," he said.

The long struggle to find the key to freedom



Donald Marshall (left) was freed in 1982 under a seldom-used clemency provision in the Criminal Code after serving 11 years for a murder he didn't commit but Steven Truscott (centre) and Wilbert Coffin (right) both failed in their attempts to have their convictions overturned through a Supreme Court review.



A CHRONOLOGY

BY DAVID ROBERTS and TIMOTHY APPLEBY
The Globe and Mail

Chronology of the David Milgaard, Larry Fisher cases:

- September, 1968** — Construction labourer Larry Fisher and his wife move to a basement suite in the Saskatoon home of Albert Cadrain, one block from where the mutilated body of nurse's aide Gail Miller will be found four months later.
- Oct. 21, 1968** — Mr. Fisher rapes a Saskatoon woman at knifepoint in an alley seven blocks from his home, cutting her vagina with a bread knife.
- Nov. 13, 1968** — Mr. Fisher rapes a 17-year-old girl 10 blocks east of his home, holding a small knife to her throat.
- Nov. 29, 1968** — Mr. Fisher indecently assaults a 19-year-old female student at the University of Saskatchewan, where he is working.
- Dec. 14, 1968** — Saskatoon police warn the city about a serial rapist who talks to women and then drags them into alleys.
- Jan. 31, 1969** — David Milgaard and two young hippie friends set out from Regina to Saskatoon by car, pick up Mr. Cadrain, then leave for Edmonton.
- Jan. 31, 1969** — The body of Ms. Miller, 20, is found in an alley a block away from the Fisher-Cadrain home. She had been sexually assaulted and stabbed to death on her way to work. Another woman, now living in Toronto, disclosed recently that she was molested by a man resembling Mr. Fisher earlier that morning. She reported the attack to police.
- Feb. 4, 1969** — Saskatoon police say they are pursuing the possibility that Ms. Miller's killer is the serial rapist they've warned about.
- Feb. 5, 1969** — Saskatoon police interview Mr. Fisher at the same bus stop used by Gail Miller. Mr. Fisher said he was at work the day Ms. Miller was slain. Police fail to follow up.
- March, 1969** — Saskatoon police begin to focus on Mr. Milgaard after Mr. Cadrain comes forward to say he saw blood on Mr. Milgaard's pants the day of the killing. Mr. Cadrain eventually claims a \$2,000 reward.
- May, 1969** — Protesting his innocence, Mr. Milgaard is charged with the Miller slaying.
- Jan. 31, 1970** — After a two-week trial, Mr. Milgaard is sentenced to life in prison.

LAST HOPE / Centurion Ministries takes its name from the Biblical account of Christ's Crucifixion

Investigator seeks the gospel truth

BY TIMOTHY APPLEBY and DAVID ROBERTS
The Globe and Mail

CONVICTED of the 1980 rape and murder of a Texas schoolgirl, Clarence Bradley says he "always kept the faith that someone would look at the facts." Nonetheless, when James McCloskey came into Mr. Bradley's life, the fuse was running perilously short — he was six days away from execution.

and draws its funds from benefactors, derives its name from the Roman soldier who, according to the gospel, gazed up at Jesus on the cross and said, "Surely he must be innocent."

Mr. McCloskey says the odds are often daunting, but "once we become convinced that a person convicted of murder and sentenced to life is innocent, then we roll up our sleeves and begin to investigate it from A to Z as if it happened yesterday."

He says his hardest task is to filter the hundreds of calls for help he receives every year. Resources permit less than a dozen investigations at a time. David Milgaard was his first Canadian case.

"Of the others he's championed, one has been executed and one person turned out to be guilty. Two others, our investigation just fell short — we just couldn't come up with evidence that had weight in the courts."

"With that one person, we worked with him for a year and my investigator was coming up with everything that the state said. I took this down to the inmate, confronted him and he confessed the crime to me. I said, 'Bye bye,' and we were gone."

He says the Milgaard case "jumped over the hundreds and hundreds of others" because of the strong indications not only that Mr. Milgaard is innocent, but that convicted serial rapist Larry Fisher may be guilty.

Another Centurion success story is Philadelphia mechanic Damaso Vega, 47, who was convicted of the murder and rape of Maria Rodriguez, found hanged with a belt in June, 1982, in Longbranch, N.J.

Mr. Vega was freed in November, 1989, after Mr. McCloskey secured recantations by the prosecution's star witnesses, who said they had lied because of police coercion.

"I would have died in prison," Mr. Vega says. "I was in Trenton [penitentiary] for almost eight years and they got the worst criminals in the world there."

"This man's work is amazing. He went all over, he travelled to Puerto Rico two times. It was like a miracle to find a man like that."

Centurion Ministries, which bears all the expense of its investigations

RARITY / The cabinet has sought Supreme Court opinions in murder cases only twice in 40 years

Previous reviews upheld convictions

BY TIMOTHY APPLEBY and DAVID ROBERTS
The Globe and Mail

IN referring David Milgaard's 1969 murder conviction to the Supreme Court of Canada and asking whether a miscarriage of justice may have occurred, Justice Minister Kim Campbell has chosen a highly unusual procedure.

Only twice in the past 40 years has the federal cabinet sought the court's opinion on the merits of a murder conviction that had exhausted all avenue of appeal. In both cases, the convictions were upheld.

The review process, which takes the form of the court answering a question, is entirely public. The court can examine evidence that would normally be inadmissible, and in this case the outcome will give Ms. Campbell the widest discretion to act.

The first case to be reviewed by the Supreme Court in recent years was that of Quebec prospector Wilbert Coffin, who went to the gallows amid a public uproar, bitterly protesting that he had been framed. He had been convicted of the slaying in 1953 of three American hunters. The question posed by the cabinet to the court in 1955 was hypothetical: Given that Mr. Coffin had been denied leave to appeal to the Supreme Court (as was Mr. Milgaard), how would the court have ruled if it had heard such an appeal?

The Supreme Court responded that it would have had no reason to overturn the original verdict. In 1956, Mr. Coffin was hanged.

The second case, equally famous, stirred debate on a range of issues, including capital punishment to the handling of young offenders.

Steven Truscott was 14 when he was charged with the rape and strangulation of 12-year-old Lynne Harper near Goderich, Ont. He was sentenced to hang in 1959, but his sentence was commuted to life imprisonment. In 1967, the Supreme Court re-examined the trial evidence and new submissions.

In that instance, the gate that opened up the case to review by the Supreme Court was a section of the Criminal Code that was not law until 1961, namely that anyone who had been sentenced to death, and whose conviction had been upheld on appeal, could appeal to the top court "on any ground of law or fact, or mixed law or fact."

Mr. Truscott was one of about 30 witnesses who testified before the court. In an 8-1 decision, the court turned him down.

Mr. Truscott was paroled two years later and now lives in Southwestern Ontario.

In the Milgaard case, his lawyers appealed to Ms. Campbell under a seldom-used clemency provision in the Criminal Code, Section 690, which permits a justice minister to order a new hearing.

About 30 applications a year are made under Section 690, but only four have been granted in the past decade.

The most famous case was that of Donald Marshall, a Micmac from Nova Scotia who in 1982 was freed after serving 11 years for a murder he didn't commit. The most recent is that of Wilson Nepeose, a Alberta Cree whose murder conviction three years ago is being reviewed by a judge of the Alberta Court of Appeal.

Section 690 empowers a justice minister to direct a new trial or new hearing before any court. Most often the court has been the local provincial court of appeal.

In handing the Milgaard matter to the Supreme Court, Ms. Campbell is effectively seeking the court's advice on whether she should act. She is asking two questions: "Does the continued conviction of David Milgaard in Saskatchewan, Saskatchewan, for the murder of Gail Miller, in the opinion of the court constitute a miscarriage of justice? If there has been a miscarriage, what remedial action under the Criminal Code, if any, is advisable?"

But Ms. Campbell is not in this case confined to Section 690, because her second question invokes remedies available under the entire Criminal Code. That opens up the possibility of, for instance, a pardon.

Hersh Wolch, one of Mr. Milgaard's lawyers, said yesterday that the reference bears superficial resemblance to the Truscott case insofar as Mr. Milgaard will be allowed to testify. But this time, the court will have the power to subpoena anyone who has even peripheral interest.

And the witnesses will have no choice but to testify. "If the Supreme Court orders you to testify, you testify," Mr. Wolch said. "If the Supreme Court says you're a woman, you put on a dress."

"The Supreme Court will set the rules because there really are no rules."

Ms. Campbell said yesterday that her ultimate decision will not depend solely on the rules of evidence. "I am not a court," she remarked. "Mercy begins where the law ends."



Larry Fisher

Feb. 21, 1970 — Three weeks later, Mr. Fisher rapes an 18-year-old Saskatoon woman six blocks west of his home. A city police detective tells the young victim that the attack is similar to the one on Miss Miller. The police files today indicate this case is technically unsolved — although Mr. Fisher confessed in September, 1970, to the crime. Mr. Fisher's name does not appear in this file, or on the three other rape victim files, which are now listed as "missing" by Saskatoon police.

Aug. 2, 1970 — Mr. Fisher, whose employer has a contract in Winnipeg, rapes and robs a 19-year-old nursing student there at knifepoint.

Sept. 18, 1970 — Winnipeg police visit Mr. Fisher's home and ask about his truck, which was seen near the rape scene.

Sept. 18, 1970 — Mr. Fisher is caught in the act of raping an 18-year-old Winnipeg dental assistant at knifepoint. He confesses to the two Winnipeg rapes, to five indecent assaults there, and to the four Saskatoon attacks.

September, 1970 — Two Saskatoon detectives travel to Winnipeg to interview Mr. Fisher in connection with the Saskatoon knifepoint rapes, but apparently fail to ask him about the Miller slaying.

Jan. 31, 1971 — Mr. Milgaard's appeal of the Miller murder conviction is dismissed by the Saskatchewan Court of Appeal. Prosecutions director Serge Kujawa acts for the Crown.

March 17, 1971 — Saskatoon Deputy Police Chief Lee J. Corey writes to Mr. Kujawa outlining the facts of Mr. Fisher's four sex assaults.

May 28, 1971 — Mr. Fisher pleads guilty to the two Winnipeg rapes and is given a 13-year sentence. The five indecent assaults in Winnipeg to which he has confessed are not pursued by Winnipeg police.

Nov. 15, 1971 — Mr. Milgaard's final appeal to the Supreme Court of Canada is dismissed.

Dec. 8, 1971 — Mr. Kujawa moves by way of direct indictment to raise Mr. Fisher's four pending Saskatchewan charges to Court of Queen's Bench. The case is to be heard in Regina and the direct indictment is signed by acting attorney-general Allan Blakeney.

Dec. 21, 1971 — Mr. Fisher pleads guilty in Regina to the three rapes and one indecent assault in Saskatoon. The five-year sentence is to be served concurrently with the 13 years he is serving for the Winnipeg rapes. The guilty plea goes unreported in the media.

December, 1971 — Mr. Fisher and Mr. Milgaard briefly serve time together at Prince Albert Penitentiary, but apparently do not meet.

May, 1979 — Mr. Milgaard's parole is denied, in large part because of a brief escape from Dorchester Penitentiary.

January, 1980 — Mr. Fisher is paroled to his mother's home in North Battleford, Sask.

March 31, 1980 — Mr. Fisher rapes and repeatedly stabs a 56-year-old North Battleford woman. Convicted of attempted murder and rape, he is sentenced in June, 1980, to a 10-year term to run in addition to the time outstanding on his earlier convictions.

Aug. 22, 1980 — Mr. Milgaard slips away from an escort in Winnipeg and is recaptured on Nov. 10 after being shot by police in Toronto.

September, 1980 — Mr. Fisher's former wife, Linda, tells Saskatoon police she believes her husband was Miss Miller's killer. She recounts her paring knife being missing and her husband's strange behaviour the day of the murder. Police fail to follow up.

September, 1980 — Mr. Milgaard applies to the federal Justice Department for a review of his case. Key witnesses at his trial by now have recanted their testimony or alleged they were coerced by police. The scientific evidence against Mr. Milgaard is rebutted.

February, 1991 — Justice Minister Kim Campbell denies Mr. Milgaard's application for a review of his case under Section 690 of the Criminal Code, saying there is insufficient evidence to conclude a miscarriage of justice has occurred.

May, 1991 — Mr. Fisher's four Saskatoon victims are informed by U.S.-based Centurion Ministries that their attacker was caught 20 years ago. They had not been told. An investigation by Centurion also concludes that Mr. Milgaard's conviction was a "classic frame" and that much evidence in timing, sequence and method of the knife attacks points to Mr. Fisher.

Aug. 16, 1991 — On the basis of affidavits from Mr. Fisher's victims and trial witnesses, Mr. Milgaard files a new application for Ms. Campbell to reopen his case.

Aug. 29, 1991 — Saskatoon police files on Mr. Fisher's victims are reported missing.

September, 1991 — Saskatoon police admit some Fisher files are missing, but say there's no evidence of wrongdoing.

Sept. 8, 1991 — Prime Minister Brian Mulroney promises Mr. Milgaard's mother, Joyce, he'll look into the situation.

Sept. 12, 1991 — The Saskatchewan Police Commission begins a probe into the missing police files.

Sept. 17, 1991 — Ms. Campbell says Mr. Milgaard's new application will receive the same thorough review as the one she denied in February, but that the Prime Minister's concern won't affect it.

Oct. 31, 1991 — The National Parole Board denies Mr. Milgaard parole, but recommends a series of escorted day passes. He is transferred from Stony Mountain Institution to the adjacent minimum-security Rockwood farm annex.

Nov. 29, 1991 — Ms. Campbell refers the Milgaard case to the Supreme Court of Canada.