

BRIEF

For The Justice and Human Rights Committee
Regarding

Bill C-40 - Miscarriage of Justice Review Commission Act
(David and Joyce Milgaard's Law)

By Darwin Seed

"Look out! There's a GLACIER 3.2 km away, and it's headed STRAIGHT for us! RUN!"

Said no one. Ever. A glacier could reach that point in a little less than thirty years.

Interestingly, it has taken 33 years for a Miscarriages of Justice Commission to reach THIS point. Basically, in a race with a glacier, so far Parliament has been losing.

Time to activate the finishing kick! And you are just the people to do it.

Justice MacCallum, who headed the Royal Commission that investigated David Milgaard's wrongful conviction stated in the report that: "...while Milgaard's family members mounted a formidable public awareness campaign, their efforts also created tension and resentment within the police and the Crown's office."¹

David Milgaard was wrongly convicted, and the people who wrongly convicted him felt "tension" and "resentment" because their laughable, were it not so tragic, incompetence was pointed out.

Out of the buffet of available emotions, there were arguably many more appropriate ones available. Such as Shame. Sorrow. Regret. Guilt. Remorse. Desire to improve. Rejoicing that justice was finally achieved.

Yet in Saskatchewan, they still act like kindergarten kids who lost their favourite marbles in a game on the playground. Childishly sulky and bad tempered. Sore losers.

They don't have the quality of character to either stop or rectify wrongful convictions.:

In February 1991, former Saskatchewan prosecutor Serge Kujawa was outraged that the Supreme Court was reviewing the Milgaard case and called Milgaard a "guilty kook," reported the Winnipeg Sun.

"It doesn't matter if Milgaard is innocent of the 1969 murder for which he's spent 22 years in prison – his case should remain closed," Kujawa, then an NDP MLA, told the Winnipeg Sun.

"The whole judicial system is at issue – it's worth more than one person," said Kujawa². THAT is the longstanding, ongoing attitude toward wrongful convictions by prosecutors, police and the ministry of justice for Saskatchewan. DON'T dare Question the System. Especially when they are wrong. Sadly, it seems to be the attitude in other jurisdictions in Canada also.

¹ From a news story titled: "Joyce Milgaard 'delighted' by report recommendations". *CBC News*. September 26, 2008. Retrieved October 14, 2015. Wikipedia

²Quoted from an article at SASKTODAY.ca Jul 25, 2022 7:12 PM by Lisa Joy titled: Video: Hear David Milgaard's own words on his wrongful conviction

Common sense dictates that you don't maintain the public trust in the integrity of the justice system by THAT justice system NOT CARING if innocent people are wrongly convicted. There is also no trust WHILE THAT justice system fights AGAINST truth and justice. These things are self-evident. Except to police and prosecutors and judges and coroners it seems.

One only has to look at the recent bail hearing for the Quewezance Sisters, and the continuing bitter vindictiveness of the Saskatchewan Ministry of Justice becomes self-evident.

Racism saturates the lives of minorities in ways most white people miss completely.

Like letting them defend themselves in their own language. The Royal Commission on Donald Marshall Jr.'s wrongful conviction found that when testifying before the courts in English, Mr. Marshall was asked 29 times to speak up and this may have affected their determination that Mr. Marshall was not telling the truth. And yet, when he testified before the commission in Mi'kmaq, "Marshall's ability to express himself freely in his native language introduced a comfort level to the proceedings that were absent in his other court appearances. It had the positive effect in obtaining the best evidence possible from the witness."³ Wow. Who would have thought? The commission believed Mr. Marshall whereas the jury that convicted him and the Court of Appeal that acquitted him but blamed him for his own wrongful conviction did not.

Racism is immorally obscenely pervasive in the justice system. Particularly in Saskatchewan.

Selected QUOTES

"Amanda Michayluk's final moments were spent walking alone in the cold and snow through a Saskatchewan field as her family anxiously waited for an RCMP search and rescue team that would never arrive.

A scathing report from the Civilian Review and Complaints Commission for the RCMP says officers responding to calls for help from Michayluk's family had tunnel vision, relied on stereotypes and did an inadequate ground search.

The report notes the civilian search party was able to locate Michayluk very quickly by following her tracks, "which were still clearly visible, a day after (she) had disappeared."

Her cause of death was hypothermia".⁴

There is evidence to show that the RCMP in Saskatchewan showed wanton or reckless disregard for the life and safety of Amanda Michayluk, an Indigenous Woman. And not only were they not charged, they were not fired.

³ Royal Commission on the Donald Marshall, Jr., Prosecution Digest of Findings and Recommendations

⁴ This report by The Canadian Press was first published Feb. 17, 2023. Kelly Geraldine Malone, The Canadian Press

They left Amanda Michayluk outside in the sub zero winter weather to die. How is this fundamentally any different from the Saskatoon Starlight Tours?

In March of 2016, it was confirmed that someone at The Saskatoon Police Service changed the department's Wikipedia page to eliminate that whole record of racism regarding "starlight tours", so named because of the habit of police officers of taking aboriginal men and women to the outskirts of the city in winter and leaving them to die in the cold.⁵

Of course, what wasn't ever mentioned in the Wikipedia article on The Saskatoon Police Service was the alternative of taking aboriginals to the river and ordering them to swim across. If they lived, then they got to go free. I had a friend on the police force who quit because of such things. Also not mentioned was the practice of handcuffing aboriginals to hockey nets and shooting hockey pucks at their heads.

So yes, they still hate us. Although they have a more layered approach. They still kill us...but they also deny us rights and protections.

Harry laForme, who as you know is the Indigenous retired Ontario Court of Appeal judge who was asked by Justice Minister Lametti to prepare the report alongside former Quebec Court Justice Juanita Westmoreland-Traoré on an independent process to review potential wrongful convictions, said in an interview with CBC that...

"...the legislation isn't set up to address the issues of overrepresented populations in prisons, including incarcerated Indigenous people, but wants it to reach that point and also be able to examine that systemic problem."

"The fact of the matter is Indigenous and Black people ... don't commit a disproportionate [amount of] crimes as a result of being Indigenous or Black, they are overrepresented because they're over-policed," he said.

"The systemic part of our justice system is unfortunately racist." ⁶

Firing incompetent and racist people in the justice system. Arresting those in the justice system who are corrupt and break the law. Accountability and consequences. These are the things that will FINALLY change the system for the better. These are the things that will ALSO help prevent wrongful convictions.

⁵ Saskatoon police removed "starlight tours" section from Wikipedia, student says - Internal police investigation reveals IP address linked to changes traced back to station - Dan Zakreski CBC News Posted Mar 31, 2016 7:00 AM | Last Updated Mar 31, 2016

⁶ Dayne Patterson CBC News Posted Feb 20, 2023 6:00 AM CST | Last Updated Feb 20 2023

I was invited to virtually attend a Bilingual Technical Briefing Related to a Miscarriage of Justice Review Commission on February 16, 2023. I asked a question: "A garage services your vehicle and returns it to you with only one lug nut on each wheel and it isn't even tightened. From what you are saying, the new Commission will be able to note that there was only one lug nut and that it was not tightened, but they won't be able to do anything about the garage? Where is the accountability for the racism in the system that causes the problems?"

Racism in the justice system can be likened to a cliff, only in this case, the solution is not EITHER a better fence at the top OR better access to an ambulance at the bottom.

You need both. The Miscarriages of Justice Commission needs to be set up to BE both.

Racism in society may be ever present, but it is more UNACCEPTABLE in the justice system, or there is NO justice. There must be ZERO tolerance for racism in the justice system.

Regarding The Saskatoon Police Service "starlight tours": It's of interest to note more than two bodies were found, but only two cases were ever addressed. An ONGOING denial of justice, with the added fact that there may just be more racist and murderous officers still working.

Racism is not just about education levels. I have known some very highly educated racists, and people with barely-there high school educations who are not even remotely racist. People, including those in the justice system, are not racist because they don't know any better.

They are racist because they choose to be racist.

People say, well there ARE good police and prosecutors and judges too. But, if they are not rooting OUT the bad ones, gathering evidence and testifying against them so they are either charged when committing crimes, or fired when violating rights...and instead are turning a blind eye, or covering for them...then they are NOT actually "good".

Select experiences of my own with The Saskatoon Police Service: I'm jogging, muscle shirt, shorts, runners, headphones. A police cruiser pulls up beside me: "What are you doing?" ME: "Kayaking down the Potomac." Confused looks. ME: "Just kidding. I'm jogging." OFFICER: "Oh."

Next: Just came off the Broadway Bridge on the downtown side and a police cruiser pulls up on the sidewalk to block my path. OFFICER: "Someone just stole from a store in the Midtown Plaza." ME: "You mean that Mall I'm walking toward and NOT running away from? My, how clever of me." The Officer makes me place my hands on the car while he searches my backpack. OFFICER: "What's this?" ME: "My scriptures including my Book of Mormon. How

much do you know about The Church of Jesus Christ of latter-day Saints and would you like to know more?" OFFICER: "You can go." And yes. That encounter DID violate Charter Rights.

Funny one happened recently when I was pulling weeds in my parent's yard. I had a handful of weeds and was reaching for another weed when a police cruiser stops beside me. OFFICER: "What are you doing?" I raised an eyebrow. Okay. This guy was NO Sherlock Holmes. His problem was that I had native blood and was in a nice area. He didn't think I belonged.

The Saskatoon Police Service still stinks with racism.

The encounter that really matters was one Sunday when I was driving my little family to Church and the roads were icy. A downtown intersection. Light turned green, but I went slow and exited the intersection when the light was yellow. The three cars behind us, however, went through a red light. Three guesses who the police pulled over. Oh! You only needed one!

My then wife duly noted how easy it was for the police to let the white people who broke the law continue unmolested, while they specifically harassed the Indian. Me.

My then wife came from a family with a long history of racism. Not that they wore hoods. Publically. But she did note when we married that there were grandparents spinning in their graves. Not the best family for me to marry into, but I was in love with her! Okay. Wait. Saying "in love WITH her" would erroneously imply that she also loved me. I came to conclude that she was perhaps some kind of enemy agent. From Spectre. Or Kaos, like on "GET SMART".

I am supremely confident that with the current legislative body, residential schools would NOT have happened on your watch. But that is only one third, now eliminated, of what was a three part problem. The other two parts remain: Racism in churches and in the justice system. Sadly, there are those in these entities who remain reciprocally supportive in their racism.

Both the leadership and members of the Church of Jesus Christ of Latter-day Saints in the nineteenth century thought like the majority of other Americans: That in order to preserve the purity of the white race, interracial marriages should be forbidden.

"In an address to seminary and institute teachers at Brigham Young University on June 27, 1958, President Kimball, then a member of the Quorum of the Twelve, said:

" . . . [T]here is one thing that I must mention, and that is interracial marriages. When I said you must teach your young people to overcome their prejudices and accept the Indians, I did not mean that you would encourage intermarriage."⁷and ⁸

⁷ Kimball, Edward L. (1982). The Teachings of Spencer W. Kimball. Bookcraft. p. 226. ISBN 0884944727.

⁸ President Kimball's statement was reprinted in the 'Church Section' of the 'Deseret News' on June 17, 1978

This was also taught in Church manuals. "Choosing an Eternal Companion," Aaronic Priesthood Manual 3 (1995), pg 128, and "Marriage for Eternity," Eternal Marriage Student Manual (2003), pg 169.

In November of 2005, my then wife's father stated: "I will give you money to leave that Indian." She didn't actually consider it UNTIL local Church leadership, both my bishop and my stake president, told her that she should take my children and leave me to "teach me a lesson".

This is known as counselling a crime.

Section 283 of the Criminal Code Abduction

283 (1) Everyone who, being the parent, guardian or person having the lawful care or charge of a child under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that child, whether or not there is an order referred to in subsection 282(1) in respect of the child, with intent to deprive a parent, guardian or any other person who has the lawful care or charge of that child, of the possession of that child, is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.⁹

My then wife and her daughter from another relationship were abusive to my four children. Plus, my then wife also punched, kicked and slapped me. I tried to find ways to make money from home so I could be there to protect my four children.

Racist local Church leaders gleefully saw this as an opportunity to condemn me in my then wife's eyes, prove me inadequate, and break us up.

A couple of quotes from emails from local Church leaders to back me up:

FROM: DOUG Robertson <email address removed> (Select Quotes)

"You stated that Bishop Ericson and President Slocombe were predators."

First, it may be your opinion that they were accessories to abduction. The law, however, makes allowance when children are in harm's way. Rightfully or not, the court decided that you were a threat to them."

Second, it is unlikely that they destroyed your family. Francine had already applied for divorce and already laid criminal charges against you.

⁹ R.S., 1985, c. C-46, s. 283

My reply: (Select quotes)

When my children were abducted on March 16 2006...there was NO COURT. There was NO ARREST. There were NO ALLEGATIONS whatsoever.

If I could draw it in crayon for you...I would...perhaps THEN you would understand. AFTER I told Francine that I would have her arrested for abducting my children and keeping them away from me for THREE MONTHS...At the end of JUNE 2006...

THEN Francine and Sarah made the false allegations about me to cover up their crime of abduction.

FROM DOUG ROBERTSON (Select Quote)

"Well, you're right--I did get my facts mixed up. Perhaps my presumption that Bros. Slocombe and Ericson are not predators caused me to create defenses that aren't there. In my mind, I placed their actions months after the fact. That is humbling. Thank you for pointing out my error, and for disabusing me of my misunderstanding of the law (re: imminent danger at the time of abduction).

Quote: "That when we first separated I was reluctant to let Darwin have a lot of time with the children. I was feeling upset about his inability to face up to his responsibilities and problems. I wanted him to get a job to support us, and to go to counselling. I realized after that it was not the right thing to do to tie parenting time to child support, but I felt hurt and disappointed in Darwin."

¹⁰

So NO imminent danger at the time of abduction.

Then in a follow up email:

FROM: Doug Robertson <email address removed>

Fri 2013-05-03, 12:15 PM

Doug

Bro. Seed:

Please do not act in haste. I am not scared for myself if you were to approach the press. I am, however, concerned about to what it will do to you. How do you think the Church will view your desires to publicly condemn local leaders? - Close Quote

Trying to cover-up the racism. Trying to cover up their crime of counselling a crime.

¹⁰ Francine Natalie Taylor's affidavit of August 14, 2006

So just like with residential schools, church and the justice system combined to place children, in this case, my four children, in an abusive situation. And prevented me from protecting them.

If you asked me, I would tell you that I still think it is THE true Church of Jesus Christ. I will also tell you that too many leaders and members are putzes, if I'm using the Yiddish correctly. And WAY too many leaders and members are racist. (And uncharged alleged criminals.)

After I was arrested, I asked if there was a law against a Mother kidnapping her own children. As we've seen, there is. And the Supreme Court of Canada definition is "no unilateral removal". I had HOPED there would be such a law, but I was not certain.

Both the police, and as it turned out, a prosecutor who later turned out to be the prosecutor in my case lied to me and told me there wasn't. This is known as withholding disclosure. Impeachable material that could discredit their witnesses. And as I was representing myself [please insert your own joker here] it was kind of important for me to know.

I had (with optimistic hope such a law existed) told my then wife that I would have her charged with taking my children illegally on a Sunday, which she admitted in court documents. On the Thursday, she and her daughter had me arrested for sexual assault. Accusing me to discredit me so they don't get arrested themselves. Can you say "motivation to fabricate"?

After catching my ex's daughter (my accuser) in a documented lie, and after her own mother admitted to throwing a wooden spoon at her daughter (abusive) BECAUSE she was lying again, AND after the daughter admitted under oath to a habit of lying to get out of trouble...the judge said that this was all a good reason to believe her. I kind of figured the fix was in. So, in a case that hinged on the credibility of the witness who had NO credibility...I was convicted.

Policy Manual for Saskatchewan Municipal Police Services, established by Section 26 of The Police Act, which is legal statute, says the police are OBLIGATED to investigate EVERY complaint of parental child abduction. Law doesn't protect Indians.

I have several letters and emails from the Saskatchewan Ministry of Justice. One of the first ones claims that my children were not abducted, because my ex did not take my children to another country and change their name. ¹¹

Not what the Supreme Court says about it at all. Simply NO unilateral removal. ¹²

They also claimed that my children weren't abducted because it was a marriage breakup. ¹³

¹¹ Ministry of Justice and Attorney General (for Saskatchewan) Public Prosecutions Division - signed by W. Dean Sinclair Director of Appeals July 5, 2011

¹² Supreme Court of Canada case R. v. Dawson, [1996] 3 S.C.R. 783

¹³ Ministry of Justice and Attorney General (for Saskatchewan) Public Prosecutions Division - signed by W. Dean Sinclair Director of Appeals July 5, 2011

Guess how many parents kidnap their children when they are staying together?

Anyone? Anyone? Bueller? So yes. That WAS a fundamentally not very bright thing to say.

Next, they charge an aboriginal with Section 283 parental child abduction when he had his child from morning until the afternoon. Six hours. Yet, they refuse to charge my then wife who initially kept my children from me for months.¹⁴

Racist double standard. They said it was because she never HID my children.¹⁵

In actuality, they could all live across the street, but if she kept my children from me, it would still be illegal. No unilateral removal.

But, in the spirit of cooperation, I provided evidence to them that my ex did indeed hide my children. First in the town of Dundurn Sask, then in the city of Moose Jaw Sask.

Cue the crickets chirping. No more responses. They knew my accusers abducted my four children, and so they had motivation to fabricate. But the ministry of justice lied to me, withheld disclosure and repeatedly refused to rectify the situation. The Serge Kujawa attitude still prevails. It doesn't matter that I am innocent, because to them it is the system that is important.

Plus the whole racist thing. They don't charge two white women with Section 283 abduction despite overwhelming evidence, but IMMEDIATELY charge an aboriginal man on the word of the white child abduction child abusers.

Oh! Did I mention that the prosecutor in my case was found guilty of withholding disclosure in another case occurring at around the same time? Before I was sentenced?¹⁶

I filed a complaint with the law society about my case, and they ruled that the prosecutor was not obligated to tell me about parental child abduction because...wait for it...that is not what I was charged with.

The rules of disclosure are very broad...especially when the defendant is self represented.

The law society needs to go back to law school.

So the child abusing child abducting proven liar witnesses had no credibility, and the racist police with a long history of racism withheld disclosure AND did not obey the statute to investigate the claim of parental child abduction had no credibility, and a prosecutor with a history of withholding disclosure withheld disclosure from me...thus having no credibility.

¹⁴ Regina Police locate four year old, arrest father following Amber Alert Published April 25, 2012 | Last Updated April 27 2012 - Saskatoon StarPhoenix - tmceachern @leaderpost.com

¹⁵ Justice Minister Gordon S. Wyant, letter dated September 6, 2012

¹⁶ "Law Society of Saskatchewan v. Cory Bliss, 2010 LSS 4"

Along with a provincial ministry of justice with a history of NOT CARING if they commit wrongful convictions. And we had better stop pointing them out or they will whine some more, and be vindictive. Like initially refusing compensation for David Milgarrd, or fighting tooth and nail with no basis against the Quewezance Sister's bail while they await ministerial review of their case. Saskatchewan Justice childishly pushed for a publication ban so as not to reveal evidence it turned out they didn't have. They presented nothing new or of merit in the actual bail hearing. But it DID delay the bail hearing itself so the Sisters would remain incarcerated longer. Like I said, vindictive.

I repeat, as did the report this proposed Commission obtained recommendations from: There needs to be accountability throughout the system. Waiting for those in the system to change themselves has been a proven decades long exercise in futility.

Since I couldn't afford legal advice, I knew nothing about the workings of the Criminal Cases Review Group within the Department of Justice. Now, since I participated in Justice LaForme's consultations, I know that it would have been useless to me. It has referred, what? 21 cases over the same number of years and only two were Indigenous (one of the two was referred just a week before the Minister announced Bill C-40).

As everyone living in Canada should know by now, these numbers make no sense given the devastating overrepresentation of Indigenous people in the criminal justice system and their over incarceration. Not because they commit more crimes but because every step of the racist system works against them.

The Quewezance sisters in Saskatchewan were imprisoned for 30 years for a crime which someone else confessed to, served time and was released years ago. Let that sink in. Justice LaForme recommended that at least one of the commissioners to the independent commission be Indigenous but, it seems the Minister ignored that recommendation in the draft Bill despite his mandate to address the overrepresentation issues.

There needs to be changes included to hold racist and or corrupt authorised players in the justice system accountable in Bill C-40. The David and Joyce Milgaard law.

Racism makes the justice system lose credibility.

Not admitting mistakes ESPECIALLY in wrongful convictions makes the justice system lose credibility. Thus, they need their mistakes made transparent for them.

Bill C-40 as written is a start but a few recommendations from Justice LaForme's report that aren't addressed and must be are the need for accountability in the justice system, the need for an indigenous commissioner, and the need for the commission to have sufficient funding.