

# Milbury guilty of assault, sentencing November 16th

K Brookland

The Brunswickan

On Friday, October 13th, Dana Milbury was found guilty of assaulting former UNB Law student, Robert Peterson.

Provincial Court Judge Patricia Cumming, in her statement to the court, first addressed the issue of the identification of the assailant. "The Crown has proved its prima facie case that it was the accused, Dana Milbury, who was involved in this incident...I am satisfied beyond a reasonable doubt that Dana Milbury was the person involved..."

As to the discrepancies in the statements given by Milbury and Peterson, Cumming stated, "I do not think that it happened exactly as Robert Peterson said, nor as Dana Milbury said. The truth falls somewhere in between."

"What is unalterable, however, is the outcome, and that was the serious physical injuries suffered by Mr. Peterson," Cumming continued.

In addressing Milbury's assertion he was acting in self-defence, she said "The moment Mr. Peterson is on the ground, if there is further application of force, it goes beyond self-defence, it is excessive force."

Milbury repeatedly told the police he had not kicked Peterson. Cumming, however, held, "I am satisfied that Mr. Peterson was kicked when he was on the ground."

Cumming concluded, "I find Dana Milbury is guilty of committing an assault on Mr. Peterson in accordance with Section 267 (b) of the Canadian Criminal Code."

Richard Cove, Milbury's attorney, requested a PSR (Pre-Sentence Report) and Crown Prosecutor, William Corby, requested a Victim Impact Statement prior to sentencing.

In her statement, Cumming also addressed the issue of the publicity prior to the trial. "The wide-spread media attention as to this being a gay bashing was unfortunate and has been detrimental." The Crown, however, has asked the court to consider a general interpretation of Section 7 (18.2) (a) (i) of the Charter, saying "the evidence as to the applicability of that section comes from Robert Peterson."

Cumming said there was "no legal precedent for this request," but the Crown is free to raise the issue at sentencing.

Milbury will appear in Provincial Court again for sentencing on Thursday, November 16th, at 1:30 p.m.

## A three day trial

On the second day of the assault trial of Dana Milbury, a lengthy voir dire was held.

A voir dire is basically a trial within a trial and means, literally, "to speak the truth." If a case is being tried by judge and jury, the jury is excused during the voir dire.

In this case, a voir dire was held to determine whether Milbury had willingly made his statements to the Fredericton City Police in November of 1999. After Provincial Court Judge Patricia Cumming viewed two of the tapes, Richard Cove, defense counsel,

said he was not arguing the admissibility of the evidence on the tapes. The voir dire was concluded, and the tapes entered into evidence.

In his first statement to police taken on November 11th, Milbury said Robert Peterson approached him on Regent Street "trying to fight with me. He hit me. I don't know why he punched me." He went on to say "I wouldn't say it was a fight, there were only two punches."

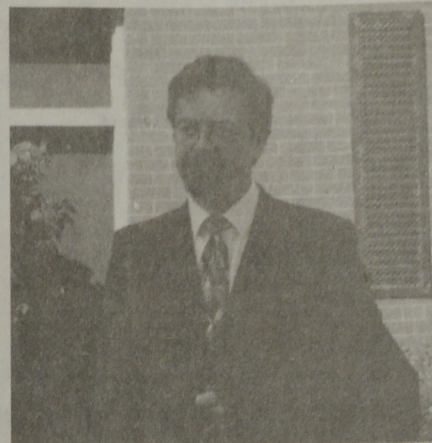
Milbury also said there were three other guys with Peterson and that "they all walked toward me...He punched me and I hit him once and I took off."

When asked what he and Peterson were wearing, Milbury said "I was wearing black cords, multi-colored shirt, red coat, and a black Red Wings ball cap."

In describing Peterson, he said he was wearing a Boston Red Sox ball cap, "he was my height, about 5' 7"... he was pretty stocky...He was wearing a yellow vest, [and a] button-up shirt."

(Peterson said his attacker was wearing a mustard yellow colour jacket, according to Constable David Cooper, the officer who responded to Peterson's call to police. Angela Mahoney, the hostess of the party which Milbury attended on the evening of the assault testified he wore a yellow jacket. She said she remembered the jacket because it was lightweight and commented to Milbury that he would be cold. Beverly Ann Joe also testified he wore a yellow jacket and it was the guy in yellow who "hit the guy in black. He [the guy in black] fell down and the guy [in yellow] kicked him three or four times...The guy in yellow ran away. The guy in black got up off the ground and walked toward King Street.")

After Milbury made his statement the police told him there were discrepancies



Claire Dough Photo / The Brunswickan  
Defense Counsel Richard Cove.

in his statement and that he was now a suspect in the Peterson assault.

The second tape was not viewed by the court.

In the third taped statement, taken on the 18th of November by Detective Constable Tim Durling, and viewed by the court, Milbury's recollection of the events of the night of the assault varied in that he admitted hitting Peterson "five times at the most." Also, when asked if anyone else was around, Milbury said he could not remember.

Photos of Milbury's injured right hand were entered into evidence.

Cove called for an adjournment until Friday morning.

There was an immediate adjournment on Friday morning as well. Richard Cove needed time to wait for a defence witness he planned to call. After a half hour of waiting the witness failed to appear. Cove instead called Milbury to the stand.

When Milbury took the stand he said he had been assaulted nine weeks prior to the incident with Peterson. Since that time, when anyone "comes at me I feel threatened."

## Saturn Canada scholarships

Through its "Commitment to Excellence" program, Saturn Canada is once again offering five scholarships, totalling \$7,500, to female university or college students.

Students from over 90 universities and colleges across Canada have been invited to participate.

The program now in its third year rewards excellence by awarding \$1,500 scholarships to each of five female students who are considered to have made significant

accomplishments in one or more of the areas of academics, business, arts, athletics, philanthropy or community involvement.

Applications for the program are available from Student Financial Awards offices at various universities and should be submitted, along with an essay of no more than 500 words, university transcripts and any appropriate reference letters by today, October 20th.

Winners will be contacted in early November.

Milbury admitted he had 14 or 15 beers and a "couple of shots," the night of the Peterson assault.

When questioned by the Crown, "You did not tell the truth the first time you spoke to the police did you?" Milbury responded "I did not want that reputation [being a gay basher] so I gave that story. I wanted to get away from it."

The Crown asked "Someone called to you; you crossed the street. Why?" Milbury responded "I wanted to know why he called me that [gay]."

The Crown pointed out that the only injuries Milbury received were to his knuckle... "almost self-inflicted [wounds]."

Milbury also admitted lying about the three of four people he claimed were with Peterson. He then admitted he was wearing a yellow jacket, not one that was dark red. He said he "read in the paper that the police were looking for someone in a yellow coat, so when I went to the police on the 11th I told them he was wearing a red jacket."

When the Crown asked him if he called Peterson a faggot, Milbury replied "No. I may have. I do not recall. I may have, I'm not sure."

Milbury did admit he threw his yellow jacket in the garbage because "it had a rip in it," but did not recall when he threw it out. After further questioning by the Crown Prosecutor, Milbury also admitted there was "a blood stain on the sleeve of the jacket."

In his closing, defence attorney Cove said "the evidence is wholly circumstantial." As far as the words "faggot" and "did you call me a faggot," were concerned, Cove said "the words were common to each." He also pointed out that "the victim was more aggressive than would first seem."

During the Crown Prosecutor's closing arguments, he pointed out "Mr. Peterson does not know [recognize] his attacker because he was beaten so severely...Even if he [Milbury] was hit first, there was such bodily harm that it would not justify self-defence in this particular case."

Corby said of Milbury there was a "consciousness of guilt, considering his actions after the incident, i.e. saying he wore dark clothing and Robert Peterson wore a yellow vest."

After the closing arguments of both attorneys, Judge Cumming retired to her chambers to consider her judgement.



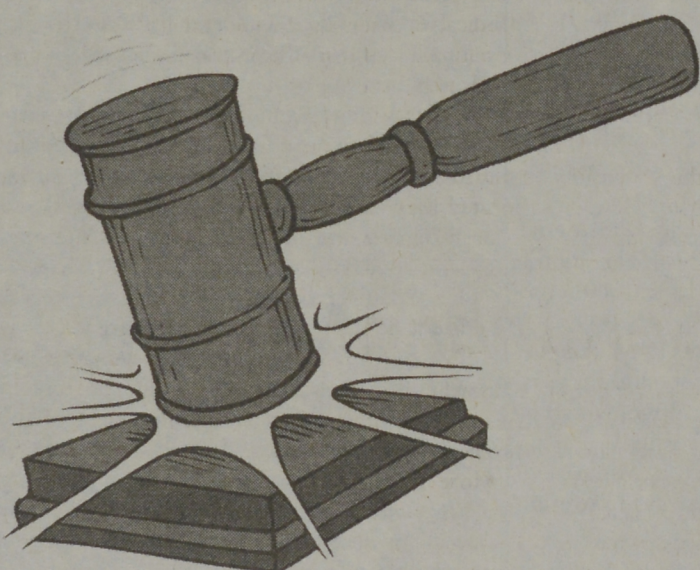
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## Considering Law school?

### UNB Faculty of Law will be holding Two information sessions on the campus.

The first will be held on October 25 at Tilley Hall, Room 302 from 4:00 to 5:00pm.

The second will be held at the Law School on October 30 in Room 2A from 4:00 to 5:00pm.

*If you are thinking about a degree in law this is a great time to get all the information you need. Students in all programs and years are welcome to attend.*

# The Capital

## MONDAY NIGHT LIVE JAZZ WITH THE "TIMEBEINGS"

### Toonie Tuesday/Cheap Night

# \$2

Draft & Liquor  
9pm-1am



# THURSDAY

## Open Mike Night

Hosted by  
**Graeme Walker**  
\$2.00 Draft from 9-11

Fri & Sat

## This Weekends Band:

### Aaron MacDonald Band

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