



Special Commission of Inquiry into LGBTIQ hate crimes

30 September 2022

Dr Danny Sullivan
Consultant Forensic Psychiatrist



By email: 

Dear Dr Sullivan,

Special Commission of Inquiry into LGBTIQ hate crimes: expert report in relation to the death of Gerald Cuthbert

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes ("the Inquiry").

The Inquiry

By way of background, on 13 April 2022 the Governor of NSW, by Letters Patent, issued a commission to his Honour to inquire into and report on historical LGBTIQ hate crimes. Specifically, the Letters Patent require his Honour to inquire into and report to the Governor and Premier on the following matters by 30 June 2023:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell; and
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. The victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. The death was the subject of a previous investigation by the NSW Police Force.

Request for expert opinion

Further to your conferences with the Commissioner and assisting team on 23 May 2022 and 31 August 2022, by this letter, you are briefed to prepare an expert report for the Inquiry in relation to death of Gerald Cuthbert from the perspective of a forensic psychiatrist addressing certain matters identified below.

Special Commission of Inquiry into LGBTIQ hate crimes

I would be grateful if you could provide your report by **21 October 2022**. If you anticipate any difficulties with this timeframe, please let me know as soon as possible.

In addition to providing your report, you may be required to give oral evidence at any hearing in relation to Mr Cuthbert's death. If you are required to give oral evidence, I will notify you as soon as practicable to discuss suitable arrangements.

Assumptions

In preparing your report, you are requested to assume the facts set out in the below summary. Additionally, please have regard to any other relevant information contained in the briefing materials provided to you.

1. Mr Cuthbert (born 27 July 1954) was found dead in [REDACTED] Stephen St, Paddington at about 6:15pm on Sunday 18 October 1981, by the residents of that apartment, [REDACTED] and Simon Cant. It is likely that he died sometime during the evening or early morning of 17-18 October 1981. [REDACTED] and Mr Cant had been away for the weekend. Mr Cuthbert was a gay man who had previously been in a long-term relationship with [REDACTED] and continued to make frequent use of his apartment for showers and meals on a "friends-only" basis, including while [REDACTED] and his flatmate were away.
2. Mr Cuthbert was found lying naked and prone in a pool of blood on a bed in the apartment. The bed covers were pulled back but covering his feet, and there was no evidence that they had been greatly disturbed. What appeared to be his clothes were found in a pile on top of other clothes against the wall near the bedroom door. A damp denim jacket was found at the foot of the bed on top of the bed sheets, together with items including a black briefcase (belonging to [REDACTED]), and a sheet of paper containing various names and figures. The room did not appear to have been ransacked, and Mr Cuthbert's watch was on the bedside table. There were no signs of forced entry to the flat. There may be a possibility that \$48 (belonging to [REDACTED]) was taken from an envelope contained in the black briefcase found on the bed, although it appears this could not be confirmed by the investigation at the time.
3. The post-mortem examination of Mr Cuthbert's body identified 48 stab wounds in his back, six wounds on the left side of the chest and eight wounds on the left side of the neck and the left shoulder. The wounds were apparently inflicted by a knife with one sharp edge. His throat had been cut, and there were no defensive wounds. The murder weapon was not located and no knife was missing from the apartment. Anal swabs were taken and tested positive for sperm, suggesting Mr Cuthbert had had sex shortly before his death.
4. Mr Cuthbert had disavowed his sexuality in around July 1980 in pursuit of his Christian faith but confessed to [REDACTED] shortly before his death that he was struggling to avoid returning to the gay scene. There was evidence he had met and had sex with at least two men on two occasions each since July 1981. The last confirmed sighting of Mr Cuthbert was at 8:00pm on Saturday, 17 October 1981, when he told a staff member at the YMCA at which he resided that he was going to "his" apartment.
5. The hypothesis advanced by investigating police was that Mr Cuthbert had met someone that evening whom he had taken back to the empty apartment, where he was murdered after sex. His recent known sexual partners were substantially (but not conclusively) excluded by alibi evidence.

Special Commission of Inquiry into LGBTIQ hate crimes

Material with which you are briefed

For the purpose of preparing your report, you are briefed with the materials in the **enclosed** index. The material contained in the index has been extracted from the NSWPF investigation file and the court file from the Coroners Court of NSW.

Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked with an asterisk on the index.

If there is any additional material that you consider would be of use to you in forming your opinion, please contact Ms Burston and this material will be provided to you (if available).

Matters to be addressed in your report

I would be grateful if you could address the following matters in your report, having regard to the material with which you are briefed and to the extent that they are matters which fall within your expertise:

1. Whether there are any aspects of the manner of death (including the nature and extent of the injuries inflicted) and/or crime scene which may indicate that a homicide has occurred in the context of LGBTIQ hate/prejudice/bias (hereafter collectively referred to as “hate”);
2. The possible motivation/s of the unidentified perpetrator of Mr Cuthbert’s injuries, to the extent that this can be discerned from the available evidence. In answering this question, please consider any relevant concepts including (but not limited to) notions of masculinity, male honour, internalised homophobia, medicalised stigma, conflating homophobia with paedophilia, perceptions of the characteristics of LGBTIQ persons, and particular psychopathologies;
3. Aspects of victimology that may be relevant to Mr Cuthbert’s death;
4. Any recommendations for further investigations with respect to determining the manner and cause of the person’s death; and
5. Any other matters you wish to raise within your expertise that may be of assistance to the Inquiry.

Subject to your discretion, the Inquiry requires only a succinct analysis of the above matters and does not anticipate that your report need exceed three pages. However, you should not feel constrained to this page guidance if you consider a longer report necessary or appropriate.

In the event that you are called to give evidence before the Inquiry, either as to general matters in connection with LGBTIQ hate crimes or particular cases, it may be necessary for the Inquiry to disclose to interested parties any correspondence or conference notes with you.

Expert Witness Code of Conduct

I **enclose** a copy of the Expert Code of Conduct with which expert witnesses in Supreme Court proceedings in NSW are typically required to comply. While the present inquiry is not a Court proceeding, I would be grateful if you would read the Code of Conduct and agree to be bound by it. I suggest the following form of words be included in the body of your report in due course:

“I, Dr Danny Sullivan, acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005 (NSW)* and agree to be bound by it.”

Special Commission of Inquiry into LGBTIQ hate crimes

Thank you for your consideration and assistance.

Please do not hesitate to contact Emily Burston, Senior Solicitor on [REDACTED] or Kate Lockery, Principal Solicitor on [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Emily Burston
Senior Solicitor
for Crown Solicitor

Encl. 2