



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

27 October 2023

IN THE MATTER OF MARK STEWART

Introduction

1. This matter was the subject of a hearing by way of documentary tender on 30 March 2023. Written and oral submissions have been made by Counsel Assisting and written submissions in reply have been made on behalf of the Commissioner of the NSW Police Force (**NSWPF**).
2. Subsequently, on 17 May 2023, the Inquiry obtained a copy of Mr Stewart's service file from the New Zealand Defence Force. Material in that file sheds some light on the background to Mr Stewart's desertion from the Royal New Zealand (**RNZ**) Navy. As a result, relevant documents from that file were tendered in chambers on 27 October 2023 and added to the tender bundle.
3. While the content of the naval service file does not give reason to alter the conclusions expressed in the written submissions of Counsel Assisting, the following observations are made in relation to the material so far as it is relevant to understanding Mr Stewart's background circumstances.

Comments on the RNZ Navy file material

4. Mr Stewart enlisted in the RNZ Navy in September 1973, shortly after his 16th birthday.¹ In the latter part of 1974 his father, John Spanswick, wrote to his son's superior officers advising them that it would not be in his son's best interests for him to be permitted to visit his family in Fiji during the upcoming Christmas holidays, due to "the current wave of hooliganism and assaults in the streets of Suva ... it is hardly a situation for a young lad from overseas to face, unless he wants to spend his leave without leaving the house."²
5. In a letter to a senior naval officer dated 6 October 1974 John Spanswick expressed similar sentiments.³ He stated that "[d]uring his last visit Mark spent the whole of his leave in various bars, poolrooms and guesthouses" rather than seeking outdoor pursuits and he expressed his concern about his son's "constant association with ... the louts of the town". He said that he and his wife were in the process

¹ Exhibit 13, Tab 44, P6 Base File – Display of Contents, 13 October 1973 (SCOI.84777).

² Exhibit 13, Tab 45, Letter from John Spanswick to The Commanding Officer, HMNZS Philomel, 9 September 1974 (SCOI.84778).

³ Exhibit 13, Tab 46, Letter from John Spanswick to The Commanding Officer, HMNZS Waikato, 6 October 1974 (SCOI.84785).

Special Commission of Inquiry into LGBTIQ hate crimes

of considering a move to New Zealand for the benefit of their son and daughter.⁴ The records also indicate that Mr Stewart then wrote to his parents complaining about the contact that his father had made with his superior officers and indicating that he wanted to be discharged from the Navy.⁵

6. It is apparent from a letter to the RNZ Navy dated 12 November 1974 written by Mr Stewart's mother that, on 6 November 1974, the Navy sent a cable to Mr Stewart's parents advising that he was missing at that time, when his ship had sailed for training exercises.⁶ In her letter, Mr Stewart's mother stated:

*Obviously Mark is all bitter and twisted with us and I very much doubt that we shall hear from him, that is assuming he is alive and has not done anything silly. You can imagine our worry and concern over the boy at the present time ...*⁷

7. Later documentation indicates that Mr Stewart was declared "AWOL" on 2 December 1974.⁸ There is no indication that he ever had any further contact with the Navy after failing to board his ship on or around 6 November 1974.
8. From the correspondence it is apparent that there was a degree of estrangement between Mr Stewart and his parents as a consequence of their desire that he be dissuaded from visiting them in Fiji over Christmas 1974 due to their concerns about his conduct and potential dangers that might arise for him in the environment in Suva at the time. It is noted however that Mr Stewart did subsequently visit his family in New Zealand in mid-1975 (see Counsel Assisting's written submissions at [61]-[62]).
9. While this helps explain how it came to be that Mr Stewart left the RZN Navy and became distanced from his family, it does not otherwise appear to provide any great insight into why Mr Stewart wished to be discharged from the Navy at the time, nor in relation to his mental state as at May 1976. Other than to add to the narrative background, it does not therefore give cause to alter the conclusions previously outlined in the written submission.
10. Finally, it is noted that a telegram was sent from 'NZDEF CANBERRA' on 15 June 1976, which advised of Mr Stewart's death and stated:⁹

There are no suspicious circumstances as the young man had an interest in rock climbing and is believed to have fallen whilst pursuing his interest.

11. The source of this 'belief' regarding Mr Stewart having fallen while rock climbing is not stated; however, one may surmise that it came from Mr Stewart's father (see Counsel Assisting's written

⁴ Exhibit 13, Tab 46, Letter from John Spanswick to The Commanding Officer, HMNZS Waikato, 6 October 1974 (SCOI.84785).

⁵ Exhibit 13, Tab 47, Letter from PL Spanswick to The Commanding Officer, HMNZS Waikato, 12 November 1974, 1 (SCOI.84783).

⁶ Exhibit 13, Tab 47, Letter from PL Spanswick to The Commanding Officer, HMNZS Waikato, 12 November 1974, 1 (SCOI.84783).

⁷ Exhibit 13, Tab 47, Letter from PL Spanswick to The Commanding Officer, HMNZS Waikato, 12 November 1974, 1 (SCOI.84783).

⁸ Exhibit 13, Tab 53, Ministry of Defence Base PON, 16 June 1976 (SCOI.84784).

⁹ Exhibit 13, Tab 52, Despatch from NZDEF Canberra re: M Spanswick, 15 June 1976 (SCOI.84779).

Special Commission of Inquiry into LGBTIQ hate crimes

submissions at [83]). It is submitted that, beyond Mr Stewart's father's recollection that Mr Stewart had an interest in rock climbing, there is no other evidence to indicate that Mr Stewart was partaking in this activity at the time of his death.

Peter Gray SC

William de Mars

Counsel Assisting