



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

27 October 2023

IN THE MATTER OF PAUL RATH

Introduction

1. This matter proceeded to a public hearing by way of documentary tender on 19 May 2023. The written submissions made by Counsel Assisting the Inquiry, dated 18 May 2023, referred at [112] to the fact that a report had been sought (but not then received) from a forensic scientist, Ms Jae Gerhard, to address a concern that had been raised by the forensic pathologist, Dr Linda Iles.
2. This additional submission relates to Ms Gerhard's report, and a supplementary report that has since been obtained from Dr Iles. In addition, note is made of a brief statement that has been received by the Inquiry subsequent to the hearing from one of Mr Rath's sisters, Ms Rosemary Rath, in relation to Mr Rath's clothing.

Report of Ms Gerhard and Supplementary report of Dr Iles

3. Ms Gerhard is a forensic scientist whose experience and training includes blood pattern analysis.¹ Ms Gerhard was asked to consider whether staining on Mr Rath's clothing, evident in the black and white scene photographs, can be identified as blood and/or another substance, with reference to a number of different areas including Mr Rath's trousers, coat jacket cuffs and the back of his jacket, as well as his lower arms and hands. Ms Gerhard was also asked whether, on the assumption that such staining was blood, she considered the location and/or pattern of the blood is a cause for suspicion.²

¹ Exhibit 26, Tab 39, Expert report of Jae Gerhard, 7 July 2023, [1.4] (SCOI.85458).

² Exhibit 26, Tab 39A, Letter of instruction to Jae Gerhard, 9 May 2023, 4 (SCOI.83087).

4. In Ms Gerhard's opinion the photographs did not enable her to determine whether the staining was deposited by an assault, or alternatively by the fall and tumble from the clifftop.³ Her reasons were twofold: that she could not conclude whether or not some of the staining may have been either mud or dirt rather than blood; and even on the assumption that it was blood, in her opinion it could have been deposited either in the course of an assault, or as a result of tumbling while bleeding.⁴
5. Following receipt of Ms Gerhard's report, a supplementary report was sought from Dr Iles that asked, on the basis of an assumption that all the relevant staining was blood, for elaboration of her opinion that the staining was "the most concerning element" of the materials that she had reviewed.⁵
6. Dr Iles noted that based on the autopsy report, the only identifiable source of blood loss was from Mr Rath's nose. Dr Iles expressed the view that if the staining on the clothing is blood, its extent cannot be accounted for by the dripping and/or smearing of blood originating from his nose following primary impact during a fall. In particular, she considered it "highly unlikely" that small separate rounded areas of staining on Mr Rath's coat sleeves and left trouser leg, if blood, could be accounted for as having originated from his nose following such a primary impact, including by passive dripping once he was in his final resting place. In her view, "this therefore accommodates a scenario where this staining, if blood, may be the result of an injury to Mr Rath's nose *prior* to his descent from the top of the cliff."⁶
7. Dr Iles considered that the more diffuse staining on the trouser legs, if blood, could not be accounted for by the dripping or smearing of blood from Mr Rath's nose given its location, extent and the autopsy findings.
8. On the other hand, if none of the staining was blood, and it was instead mud or dirt, Dr Iles considered that this could be accounted for by the primary impact (during a fall) followed by secondary tumbling impacts.⁷
9. In conclusion, Dr Iles restated her concerns about the thoroughness and adequacy of the original autopsy report, which continue to place a limitation on her opinions. Notwithstanding this qualification, she stated that "the following elements are of concern":

³ Exhibit 26, Tab 39, Expert report of Jae Gerhard, 7 July 2023, [9.1] (SCOI.85458).

⁴ Exhibit 26, Tab 39, Expert report of Jae Gerhard, 7 July 2023, [9.1] (SCOI.85458).

⁵ Exhibit 26, Tab 40A, Supplementary letter of instruction to Dr Linda Iles, 11 August 2023, 2 (SCOI.85460).

⁶ Exhibit 26, Tab 40, Supplementary report of Dr Linda Iles, 16 August 2023, 2 (SCOI.85459).

⁷ Exhibit 26, Tab 40, Supplementary report of Dr Linda Iles, 16 August 2023, 2-3 (SCOI.85459).

- a. Lack of documentation of apparent injuries to the fingers of both Mr Rath's hands as observable in scene photographs.
- b. The pattern of staining on Mr Rath's clothes. If this is blood, in her view it cannot be accounted for by blood loss from Mr Rath's nose following his primary impact, with the staining occurring during tumbling following primary impact.
- c. The manner of Mr Rath's fall death being ascribed as an accident with apparent minimal investigation, given he was located in an area that was familiar to him, and that he was not intoxicated by alcohol.⁸

Comments on the two reports

10. Understandably, particularly given the fact that the scene photographs are black and white (perhaps unsurprising given the era in which they were taken), Ms Gerhard is unable to express an expert opinion in relation to whether or not relevant areas of staining are blood. While no conclusive view can be reached on this matter, it is submitted that from a lay perspective, the visual impression conveyed by the photos suggests at least a very real possibility that much of the staining is from blood. Further, in relation to the possibility that the staining could be from mud, it is noted that there had been no rain recorded in the area in the four days leading up to Mr Rath's death.⁹
11. As a forensic pathologist, the opinion of Dr Iles carries with it the benefit of her analysis of the injuries to Mr Rath that were documented at the time. For this reason, it is submitted, Dr Iles' opinion should be preferred to that of Ms Gerhard in relation to the question of whether or not, if the staining is blood, it could have been deposited in the course of tumbling impacts following the primary impact of Mr Rath's fall.
12. On this basis, Dr Iles' opinion that blood emanating from Mr Rath's nose could not account for the staining having been the product of secondary tumbling impacts lends real weight to the possibility that the injury to his nose had occurred prior to the fall. Nevertheless, significant uncertainty unfortunately remains concerning this matter due to the limitations on the quality of the original autopsy report, as documented by Dr Iles in her initial report, in particular as to the nature of the staining.

⁸ Exhibit 26, Tab 40, Supplementary report of Dr Linda Iles, 16 August 2023, 3 (SCOI.85459).

⁹ Exhibit 26, Tab 30, Weather, Synoptic and Rainfall Observations for Manly area for period 8–17 June 1977 (Document CAS-37787-S5G0Y9-9), 26 September 2022, 15 (SCOI.82913).

Statement of Rosemary Rath

13. Subsequent to the hearing the Inquiry also assisted Ms Rosemary Rath to make a statement in relation to a matter that she had brought to the Inquiry's attention concerning Mr Rath's clothing.
14. At the time of her brother's death, Ms Rath was 13 years of age and lived at the family home in Pittwater Road, Manly.¹⁰ In her brief statement she recounts how, two days after her brother's death (likely 18 June 1977), a man came to their home and she took delivery from him of a dark suit in a "green frog" dry cleaning bag, which contained a suit jacket and long pants, and which the man described as being her brother's clothes. She placed the suit in a cupboard and mentioned the matter to her mother and one of her sisters.¹¹
15. The account of Ms Rath should be read in conjunction with the P79A Report of Death dated 17 June 1977 that describes the clothing found on Mr Rath (a suit, jumper, shirt, socks, shoes, underpants and singlet), and states that Mr Rath's property and clothing was destroyed on the authority of Mr Rath's mother.¹² On that basis, it would appear that although clothing other than the suit was destroyed very shortly after Mr Rath's death, his suit was cleaned and returned to the family.
16. These actions, with the clothing not being retained for testing or further examination (for example in relation to the staining depicted in the black and white scene photographs), would appear to be consistent with the very rapid conclusion having been reached by police at the time that the death was not suspicious.

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¹⁰ Exhibit 60, Tab 41, Statement of Rosemary Rath, 22 October 2023, [3] (SCOI.85461).

¹¹ Exhibit 60, Tab 41, Statement of Rosemary Rath, 22 October 2023, [5]-[6] (SCOI.85461).

¹² Exhibit 26, Tab 1, P79A Report of Death to Coroner, 17 June 1977, 1 (SCOI.82905).