



Special Commission of Inquiry into LGBTIQ hate crimes

30 May 2022

Dr Danny Sullivan
Consultant Forensic Psychiatrist

By email: [REDACTED]

Dear Dr Sullivan,

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

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 August 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.

Further information regarding the Inquiry is available at www.specialcommission.nsw.gov.au.

Request for expert opinion

By this letter, you are briefed to prepare an expert report for the Inquiry in relation to death of Robert Malcolm ("Mr Malcolm") from the perspective of a forensic psychiatrist addressing certain matters identified below.

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I would be grateful if you could provide your report by **Wednesday, 7 June 2023**. 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 Malcolm'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. At approximately 2:15am on 11 January 1992, Robert Hart Malcolm (born 8 March 1950) was located in a derelict house at the intersection of Holden and Eveleigh Streets in Chippendale. He was lying on his back in an unconscious state, with extensive head injuries and his clothes displaced, including his trousers and underpants lowered. Mr Malcolm died at Royal Prince Alfred Hospital on 29 January 1992 as a consequence of his injuries. He was 41 years old at the time of his death.
2. Mr Malcolm was employed at the General Post Office in Martin Place and would often have drinks with his colleagues after work. At around 4:30pm on 10 January 1992, Mr Malcolm attended the Terrace Bar at the Menzies Hotel with his colleagues.¹ After the last of his colleagues left, at around 7:15pm to 7:30pm, Mr Malcolm moved to the Punt and Pint Bar in the Menzies Hotel and began drinking with John Baxter and George O'Donnall. By this time Mr Malcolm was observed to be "pretty intoxicated" with slurred speech, unsteady gait and gazed, bloodshot eyes. Mr Baxter departed at approximately 8:00pm, and Mr O'Donnall departed at around 8:15pm.²
3. Between 8:30pm and 9:00pm that evening, four witnesses told police that they saw Anthony Hookey (known as "Beaver") walking down Eveleigh Street with a man whom they identified as Mr Malcolm from a photograph they were each shown whilst giving their statements. Mr Malcolm was observed to be drunk and staggering.³
4. Between 8:30pm and 9:30pm, Sharon Murphy was walking along Eveleigh Street and saw Mr Hookey with a man she later saw injured in the derelict house on Holden Street (namely, Mr Malcolm). Mr Hookey was carrying a carton of beer, and both men appeared drunk. The man appeared to have blood on the left shoulder of his shirt. Ms Murphy called out to Mr Hookey for a dollar and Mr Hookey said to the man, "*give her a dollar please*". The man then opened his black wallet and gave Ms Murphy a gold dollar coin. She saw that he had a lot of money in \$100 and \$20 notes. Mr Hookey and the man then turned left into Lawson Street.⁴
5. At around 9:30pm to 10pm, Ms Murphy was walking back from the 7/11. She saw Mr Hookey and the man sitting on the corner of Caroline and Eveleigh Streets. They were drinking with 'a lot of other people'. At about the same time, she saw Kirk Phillips and Richard Green walking up Eveleigh Street towards Caroline Street.⁵

¹ Statement of Francis Loughland dated 30 January 1992 (SCOI.47913).

² Statement of John Baxter dated 30 January 1992 (SCOI.83021); Statement of George O'Donnall dated 31 January 1992 (SCOI.10939.00049).

³ First Statement of Sharon Lee Murphy dated 25 February 1992 (SCOI.83025); Second Statement of Sharon Lee Murphy dated 5 March 1992 (SCOI.83038); Statement of Margaret Rose Vincent dated 14 January 1992 (SCOI.10939.00035); Statement of Joan Avril Honeysett dated 14 January 1992 (SCOI.10939.00034); Statement of Merle Joyce Roberts dated 12 January 1992 (SCOI.10939.00036).

⁴ First Statement of Sharon Lee Murphy dated 25 February 1992 (SCOI.83025).

⁵ First Statement of Sharon Lee Murphy dated 25 February 1992 (SCOI.83025).

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6. Between 1:00am and 2:00am on 11 January 1992, Mr Malcolm was discovered by three teenage boys lying unconscious with his face bloodied. His underwear and trousers were down. They alerted Jason Phillips who moved Mr Malcolm to ease his breathing, and an ambulance was called.⁶
7. Paramedics arrived at the derelict house at approximately 2:17am. Paramedics Leon Cribb and Jeff Gillam assessed Mr Malcolm's injuries and intubated him. They observed a large amount of blood around his head. Whilst assessing Mr Malcolm, Paramedic Cribb noticed that Mr Malcolm's underpants were around his knees and his grey pants were folded in half and placed across his buttocks.⁷
8. Mr Malcolm was admitted to Royal Prince Alfred Hospital at around 2:45am on 11 January 1992. He was noted to have swelling to the right side of the scalp, damage to the right eye, fractures to his facial bones, a 5cm deep laceration on his right cheek, broken and missing front upper teeth, bleeding nose and a bleeding ear. Radiological examinations revealed diffuse blood throughout the brain, complex fractures of the base of the skull, right facial bones and right orbit, probable division of the right optic nerve and bilateral lung opacities consistent with aspiration of vomitus.⁸ Mr Malcolm was subsequently pronounced deceased at 7:30pm on 29 January 1992.⁹ At post-mortem, Dr Johan Duflou determined Mr Malcolm's cause of death to be "sequelae of a head injury".¹⁰
9. A number of exhibits, including a blood-stained piece of timber, a broken brick and a beer bottle with beer still bubbling, were found nearby to Mr Malcolm in the derelict building.¹¹ Police attending the scene formed the view that Mr Malcolm had been the victim of a robbery,¹² and that Mr Malcolm had been struck about the face with a heavy weapon (such as a bat, brick or piece of wood) whilst lying on the ground.¹³
10. During the course of the police investigation, a number of witness statements were obtained implicating Mr Hookey, Kirk Phillips and Richard Green:
 - a. James Smith told police that at approximately 2:00am on 11 January 1992, Mr Hookey attended the Mansions Hotel and "kept flashing all this money he had, mostly \$20 notes". Mr Hookey purchased multiple rounds of drinks for the group of people he was with and said words to the effect of "*I just rolled someone*".¹⁴
 - b. Patricia ██████ told police that she observed Mr Hookey at around 11:00am on 11 January 1992 with a bundle of \$20 notes.¹⁵

⁶ Statement of Jason Phillips dated 16 January 1992 (SCOI.83036); Statement of ██████ 1308 dated 11 January 1992 (SCOI.10939.00029); Statement of ██████ 1309 dated 11 January 1992 (SCOI.83040); Statement of ██████ 1310 dated 11 January 1992 (SCOI.10939.00030).

⁷ Statement of Leon Cribb dated 28 January 1992 (SCOI.83031).

⁸ Statement of Dr Les Schamlzbach dated 11 May 1992 (SCOI.10290.00059).

⁹ Life Pronounced Extinct Certificate signed by Dr Anne Brady (undated) (SCOI.10494.00019); Statement of Dr Anne Brady dated 29 January 1992 (SCOI.83039).

¹⁰ Post Mortem Report of Dr Johan Duflou dated 28 May 1992 (SCOI.10494.00017).

¹¹ Statement of Constable Lyle van Leeuwen dated 19 April 1992 (SCOI.10939.00063).

¹² P79A Report of Death to Coroner dated 29 January 1991 (SCOI.101494.00006).

¹³ Homicide Squad Activity Sheet dated 16 February 1992 (SCOI.10290.00073).

¹⁴ Statement of James Frederick Smith dated 3 March 1992 (SCOI.83029).

¹⁵ Statement of Patricia Jean ██████ dated 25 February 1992 (SCOI.83024).

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- c. [1376] told police that she had heard Kirk Phillips and Richard Green laughing and saying “we did it, we killed him” at around 11:00am on 11 January 1992.¹⁶
- d. Sharon Murphy told police that she had overheard the following exchange between Kirk Phillips and Richard Green upon the discovery of Mr Malcolm at the derelict house:¹⁷

Kirk Phillips: *He should have been dead. We didn't do the job properly.*

Richard Green: *What are you talking about?*

Kirk Phillips: *That man, Robert... Let's go before the coppers grab us.*

11. Mr Hookey and Mr Phillips were charged with the murder of Mr Malcolm. Mr Green was charged with accessory after the fact to murder. [REDACTED]
12. Each of the accused were discharged following a committal hearing on 3 – 4 August 1992. The material available to the Inquiry does not readily identify any other potential suspects in relation to Mr Malcolm's murder.
13. The evidence regarding Mr Malcolm's sexuality is unclear. Mr Malcolm's friends did not know him to be gay, but also had not observed him to be interested in women or to have girlfriends.¹⁹

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 Kate Lockery 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 perpetrator of Mr Malcolm's injuries, to the extent that this can be discerned from the available evidence. In answering this question, please consider the following alternate scenarios:

¹⁶ Statement of [1376] dated 5 March 1992 (SCOI.83020).

¹⁷ First Statement of Sharon Lee Murphy dated 25 February 1992 (SCOI.83025); Second Statement of Sharon Lee Murphy dated 5 March 1992 (SCOI.83038).

¹⁸ First Statement of Detective Constable Michael Charles Starr dated 9 June 1995 (SCOI.10939.00092).

¹⁹ Statement of Francis Loughland dated 30 January 1992 (SCOI.47913); Statement of Gerald Birch dated 31 January 1992 (SCOI.10290.00036); Statement of Richard Teaken dated 31 January 1992 (SCOI.47912).

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- a. Mr Hookey, Mr Phillips and Mr Green are in fact the perpetrators. In this scenario, please assume that the statements of James Smith, Patricia [REDACTED], [REDACTED] 1376 and Sharon Murphy are accurate;
- b. Another unknown person is the perpetrator. In this scenario, please disregard the assumptions at paragraphs [10]-[12].

Please also 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 Malcolm'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."

Thank you for your consideration and assistance.

Please do not hesitate to contact Kate Lockery on [REDACTED] or [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Kate Lockery
Principal Solicitor
Solicitor Assisting the Inquiry

Encl. (2)

Uniform Civil Procedure Rules 2005

Current version for 11 November 2022 to date (accessed 20 December 2022 at 08:53)

Schedule 7

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide—

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and

- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

- (1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3(a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3(f).
- (2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must—

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must—

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.



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Index to Brief to Dr Sullivan – Death of Robert Hart MALCOLM

As at 30 May 2023

Tab	Document	Date	SCOI.No
Circumstances of death			
1.	P79A Report of death to the Coroner	29 January 1991	SCOI.10494.00006
2.	Homicide Squad Activity Sheet	16 February 1992	SCOI.10290.00073
3.	Post Mortem Report of Dr Johan Duflou	28 May 1992	SCOI.10494.00017
Police Investigation			
Police Statements			
4.	Statement of Constable Richard Anthony Yannakis	6 May 1992	SCOI.10290.00012
5.	Statement of Detective Senior Constable Paul Andrew Thomas	7 May 1992	SCOI.10939.00025
6.	First Statement of Detective Constable Michael Charles Starr	9 June 1995	SCOI.10939.00092
Crime Scene			
7.	Statement of Constable Lyle William Van Leeuwen	19 April 1992	SCOI.10939.00063
8.	Crime scene photographs taken by Constable Lyle William Van Leeuwen [sensitive images]	11 January 1992	SCOI.76954
9.	Forensic Biology Report of Rudolf Weigner	30 May 1992	SCOI.10939.00091
Medical Evidence			
10.	Statement of Leon Joseph Cribb	28 January 1992	SCOI.83031
11.	Sexual Assault Referral Unit Protocol	11 January 1992	SCOI.83022
12.	Statement of Dr Les Schmalzbach	11 May 1992	SCOI.10290.00059

Tab	Document	Date	SCOI.No
13.	Statement of Dr Anne Brady	29 January 1992	SCOI.83039
Statements of Family and Friends of Robert Malcolm			
14.	Statement of Robert McPherson Malcolm	13 January 1992	SCOI.10290.00018
15.	Statement of Francis Thomas Loughland	30 January 1992	SCOI.47913
16.	Statement of John Mitchell Baxter	30 January 1992	SCOI.83021
17.	Statement of George O'Donnall	31 January 1992	SCOI.10939.00049
18.	Statement of Richard William Teaken	31 January 1992	SCOI.47912
19.	Statement of Gerald Stuart Birch	31 January 1992	SCOI.10290.00036
Other Witness Statements			
20.	Statement of Martin Francis Daly	31 January 1992	SCOI.83037
21.	Statement of Margaret Rose Vincent	14 January 1992	SCOI.10939.00035
22.	Statement of Joan Avril Honeysett	14 January 1992	SCOI.10939.00034
23.	First Statement of Sharon Lee Murphy	25 February 1992	SCOI.83025
24.	Second Statement of Sharon Lee Murphy	5 March 1992	SCOI.83038
25.	Statement of Merle Joyce Roberts	12 January 1992	SCOI.10939.00036
26.	Statement of I308	11 January 1992	SCOI.10939.00029
27.	Statement of I309	11 January 1992	SCOI.83040
28.	Statement of I310	11 January 1992	SCOI.10939.00030
29.	Statement of Jason Bradley Phillips	16 January 1992	SCOI.83036
30.	Statement of Richard Ian Gilmore	11 January 1992	SCOI.10939.00031
31.	Statement of Garry Robert Phillips	14 January 1992	SCOI.10290.00031
32.	Statement of James Frederick Smith	3 March 1992	SCOI.83029
33.	Statement of Patricia Jean ██████████	25 February 1992	SCOI.83024
34.	Statement of I376	5 March 1992	SCOI.83020

Tab	Document	Date	SCOI.No
Statements and Interviews of Persons of Interest			
35.	Statement of Anthony Stanley Hookey	13 January 1992	SCOI.10290.00008
36.	ERISP with Anthony Stanley Hookey	30 April 1992	SCOI.10939.00019
37.	Statement of Kirk Anthony Phillips	11 January 1992	SCOI.10939.00023
38.	ERISP with Kirk Anthony Phillips	6 May 1992	SCOI.10290.00014
39.	First Statement of Richard John Green	11 January 1992	SCOI.10939.00032
40.	Second Statement of Richard John Green	4 March 1992	SCOI.10290.00023