

# Associate Professor Danny Sullivan

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Consultant Forensic and Adult Psychiatrist

7 June 2023

## PSYCHIATRIC REPORT

*In confidence*

Kate Lockery  
Principal Solicitor  
For Crown Solicitor  
Special Commission of Inquiry in LGBTIQ hate crimes  
GPO Box 5341  
Sydney 2001

Dear Ms Lockery

Re: **The death of Robert MALCOLM**  
DOB: **8 March 1950**

### Background

- [1] I have provided a report at your request. I understand that the death of Mr Malcolm is a subject of inquiry under the Special Commission of Inquiry in LGBTIQ hate crimes ('the Inquiry').
- [2] You have sought an opinion on issues of potential relevance to the Inquiry from the perspective of a forensic psychiatrist. These issues, and the materials provided to me, are set out in your letter of instruction to me dated 30 May 2023.
- [3] I work as a consultant forensic and adult psychiatrist. I was previously Executive Director of Clinical Services at the Victorian Institute of Forensic Mental Health (Forensicare), where I have worked since 2004. I completed a medical degree at the University of Melbourne. I hold three Masters degrees: in Health and Medical Law (Melbourne); Bioethics (Monash); and Management (McGill). I am a Fellow of the Royal Australian and New Zealand College of Psychiatrists, and a Fellow of the Royal College of Psychiatrists (UK). I am an Accredited Member of the Faculties of Forensic Psychiatry and Adult Psychiatry of the RANZCP. I have clinical experience in community, prison and forensic hospital settings. I hold honorary academic positions at the University of Melbourne and Swinburne University, which include teaching in forensic disability and mental health, research and publishing academic papers. In 2013 I was appointed to the Expert Advisory Committee of the Victorian Law Reform Commission for the review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. My CV is available on request.
- [4] This report is prepared in my private capacity and does not reflect the opinion of any organisation by which I am employed or with which I am affiliated. I have no conflict of interest in this matter, and no affiliation with any party in this matter.
- [5] I, Dr Danny Sullivan, acknowledge for the purpose of Rule 31.23 of the *Uniform Civil Procedure Rules 2005* that I have read the *Expert Witness Code of Conduct* in Schedule 7 to the said rules, and agree to be bound by it.

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**Information from materials**

- [6] The **Report Of Death To Coroner** was dated 29 January 1991, and noted that Mr Malcolm had been found unconscious with head injuries in the wee hours of 11 January 1992, in an abandoned house in Chippendale. He was admitted to the Royal Prince Alfred Hospital in a critical condition and died on 29 January 1992. It was noted that prior to his death, he had been seen in the company of Anthony Hookey who had been interviewed twice by police while Mr Malcolm was alive in hospital.
- [7] A **medical report provided by consultant pathologist Dr J Duflou was dated 28 May 1992**. This noted that he conducted an autopsy on Mr Malcolm on 31 January 1992. The summary reported head injury, hypoxic brain damage, facial bone fractures, bronchopneumonia, peptic ulceration, left third rib fracture, pituitary haemorrhage, hepatic steatosis and atherosclerosis. The cause of death was considered to be *sequelae of a head injury*.
- [8] The **statement of Detective Senior Constable of Police P A Thomas** described the scene at which Mr Malcolm's body was discovered in a derelict two-storey house. It was noted that there was an open bottle of beer "still bubbling and did not appear to have gone flat." Also noted were a pair of men's black shoes, a broken brick with apparent dried blood on it, and a piece of bloodstained timber. Mr Malcolm's clothing was described.
- [9] The **statement of paramedic Leon Cribb** noted that he attended the location where Mr Malcolm was found unconscious. He arrived at 02:17 hours on 11 January 1992. He noted that the man was lying "face down in a coma position... he had his underpants... down around his knees. I also saw that his grey coloured pants were off and folded in half and placed across his buttocks..." He intubated the man and took him to the Royal Prince Alfred Hospital.
- [10] The **statement of Constable First Class Lyle Van Leeuwen** noted his investigation of the scene where Mr Malcolm was found.
- [11] The **statement of Rudolf Weigner** noted he worked in the division of analytical laboratories and analysed objects found at the crime scene.
- [12] The **statement of Detective Constable First Class R A Yannakis**, noted his investigations. He interviewed defendant Kirk Phillips, and noted that he was charged with murder.
- [13] The **statement of Michael Starr** noted that he reported that he had been threatened because "I saw Kirk do it, ██████████ Hang on, I could not see Kirk do it cause I was not there."
- [14] Another **witness, Richard Green, declined to provide a statement** or to sign notes relating to the alleged conversation. ██████████  
██████████ Mr Green subsequently signed the entries in the policeman's notebook indicating that they were accurate.
- [15] A **sexual assault referral unit protocol was dated 11 January 1992**, and noted "nature of assault not known". It noted that "attempt made by... nursing staff to obtain a sexual assault kit following arrival but this was refused by social worker... sexual assault kit obtained at 20:30 and examination carried out." Specimens taken included perianal swab and smear, rectal swab and smear, and perineal swab. No result from the swabs is provided in the materials.
- [16] A **statement of Robert Malcolm provided on 13 January 1992**, noted that he was the father of Robert (Hart) Malcolm. The deceased man lived with his parents and was aged 41. His father noted "Robert used to like drinking quite a bit... rarely carried any identification or jewellery after having his watch and wallet pinched some time ago". There was no comment about his sexual or emotional life.

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- [17] Numerous **statements of acquaintances** reflected that Mr Malcolm was a heavy drinker of alcohol: Francis Loughland, John Baxter, George O'Donnall, Richard Teaken, Gerald Birch, Martin Daily.
- [18] Of these acquaintances, only two commented on his sexual life. Richard Teaken "never suspected him of being a homosexual. I never knew of any regular girlfriends although he had female acquaintances." Gerald Birch made observations that Mr Malcolm "didn't worry about trying to pick up women, he mainly stayed with men just drinking."
- [19] The **statement of Margaret Vincent** noted she saw Mr Malcolm with "one of Pat Hookey's sons", she later remembered his name as "Beaver."
- [20] The **statement of Joan Honeysett** noted she saw Mr Malcolm "helpless drunk" in the company of Beaver Hookey.
- [21] The **statement of Merle Roberts** noted that she saw Mr Malcolm and Beaver Hookey and that Mr Malcolm looked intoxicated.
- [22] The **statement of Sharon Murphy** noted that she saw the scene where Mr Malcolm was found and subsequently spoke to Richard Green and Kirk Phillips who made statements suggesting their involvement. She also saw Anthony Hookey in the company of Mr Malcolm noting that Hookey "was carrying a carton of beer...both of them was drunk." She saw that Mr Malcolm had "a lot of money in \$100 and \$20 notes in his wallet...". I thought to myself, "he is going to get bashed and they'll take the money off of him." She noted that on the following day Richard Green threatened her. In a subsequent statement, Sharon Murphy noted that when she saw Mr Malcolm alive "he had blood on his shirt on the left shoulder" then she later saw him with Hookey. She saw Hookey "and the white bloke sitting and drinking with a lot of other people."
- [23] The **statement of** [I308] noted that he was out walking around in Redfern to "see what was happening on the street" when he heard "loud snoring from an empty green house...looked in a hole into that house. I saw some pants down around a bloke's legs...lying on his back."
- [24] The **statement of** [I309] noted that he was in the company of [I308] [I310] and others, and saw Mr Malcolm lying in the house. He said "he was a white bloke and he was lying on his back. I could see his penis. I could only see from his waist down and his trousers and undies were down around his ankles."
- [25] The **statement of** [I310] noted that he saw Mr Malcolm lying in the house and they described him as "the lad's shirt was ripped open and you could see his chest. His undies were down to his knees and his trousers were down to his ankles. I don't think he had any shoes or socks on." They saw Kirk Phillips and Richard at the factory "and told him what happened. Kirk then went up to Redfern Station to ring an ambulance."
- [26] The **statement of Jason Phillips** noted that he was alerted to Mr Malcolm's presence and "I grabbed a stick that was layin near him and turned him on his side... I put the stick against the wall in the floor and leaned it against his back so he could breathe better and he wouldn't fall flat again." He noted, "he had no pants on and his jeans... and jocks were around his ankles."
- [27] The **statement of Richard Gilmore** noted the discovery of Mr Malcolm in the house "I saw from there a pair of bare legs... these legs had jocks halfway down them." He "... put him back on his left side, then just sat and waited for the ambulance to come."
- [28] The **statement of Garry Phillips** noted finding Mr Malcolm in the house as "the man who was lying on his back with his pants down around his ankles and his jocketts down around his kneecap area." They had left to call an ambulance and when they came back noted that "there was a stick leaning up against the wall in the ground with the victim's back leaning against it and he was lying on his side."
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- [29] The **statement of James Smith** noted that he saw Beaver Hookey around 2 am on 11 January 1991, "Beaver kept flashing all this money he had, mostly \$20 notes... he kept it in his 'jocks'... He said, "I just rolled someone." He also noted that he had spoken to Richard Green "he has been carrying on real strange... saying things like 'they're going to get me' and 'watch me back'."
- [30] The **statement of Patricia** [REDACTED] noted that she saw Beaver Hookey with large amounts of money on the morning of 11 January 1991.
- [31] The **statement of** [REDACTED] 1376 noted that she believed "I was drinking beer... there was a big mob of people there, they might have just been big noting themselves. They just said, "we did it, we killed him." She mentioned the names Kirk Phillips and Richard Green. She noted they had been drinking.
- [32] The **statement of Anthony 'Beaver' Hookey** noted that "a bloke who had spoken to me at the Subway Hotel also got off the train... I again seen a bloke who had spoken to me in the Subway Hotel... seemed to have followed me down because he was just standing there. I walked with him up to Redfern Street... stopped to use the automatic teller machine at the Commonwealth Bank in Redfern Street. That's when the police picked me up and took me to Redfern Police Station."
- [33] **Mr Hookey was interviewed once more on 30 April 1992.** He made denials of assaulting or robbing Mr Malcolm. He described Mr Malcolm as (assumed) to be friendly but did not make any intimation of sexual propositions or activity.
- [34] The **statement of Kirk Phillips** was taken on 11 January 1992. Following the statement, an interview was undertaken on 6 May 1992. He made denials. He was insistent about this when told he would be charged with the murder of Robert Malcolm.
- [35] The **statement of Richard Green** taken on 11 January 1992, was noted. A further statement was provided on 4 March 1992. He spoke of being in the company of Richard Gilmore, [REDACTED] 1308, [REDACTED] 1308, [REDACTED] 1310 and Kirk Phillips.
- [36] Your **letter of instruction dated 30 May 2023** noted that "Mr Hookey and Mr Phillips were charged with the murder of Mr Malcolm. Mr Green was charged with accessory after the fact to murder... 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."

### Your specific questions

*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")*

[37] [REDACTED]

- [38] All statements about finding the body of Mr Malcolm in the abandoned house indicate that his underpants and pants were down. It is not clear whether Mr Malcolm or another person pulled them down. The possibilities are that he was urinating when attacked, that after being attacked his underpants and trousers were pulled off, or he was engaged in sexual activity at the time.

However, given his degree of intoxication, it appears unlikely that he would have been involved in sexual activity and there were no other indicators of sexual activity at the scene.

[39]

[REDACTED]

[40] It is also noted that Mr Malcolm's intoxication rendered him vulnerable to attack, and that he was displaying money which may have made him a candidate for robbery. Witness statements indicate that he was in an area of town in which he may have been at risk of being robbed and it was noted that he had previously been robbed, suggesting that when intoxicated he was vulnerable.

[41] The removal of Mr Malcolm's trousers and underwear remains uncertain in significance. The results of the sexual assault kit swabs is unknown so there can be no suppositions made about him engaging in sexual activity. It is possible that the exposure of his genitals through removal of his trousers and underpants was [REDACTED] or was intended to humiliate. However given the disorganised crime scene and the lack of other aspects of posing the body, this is not obvious or clearly intended.

[42] It is noted that witnesses who viewed after the assault moved his body and propped it up with a stick, however reported that his trousers and underpants were already lowered.

[43] No other aspects of the crime scene reflect possible hate crime motivation, and there were no reported anogenital injuries on post mortem examination.

*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:*

- 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], [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, [REDACTED], paedophilia, perceptions of the characteristics of LGBTIQ persons, and particular psychopathologies*

[44]

[REDACTED]

[45] If another or others were responsible, the same inference is possible, but there is no salient information to support this contention.

*Aspects of victimology that may be relevant to Mr Malcolm's death*

[46] Mr Malcolm's intoxication appeared relevant to his death through rendering him vulnerable.

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*Any recommendations for further investigations with respect to determining the manner and cause of the person's death; and any other matters you wish to raise within your expertise that may be of assistance to the Inquiry.*

[47] Seeking sexual assault samples was thoughtful and the results may have been relevant. Although are not in the materials. It is noted that obtaining these specimens was initially not possible and the grounds for denying these were unclear. Protocols that enable appropriate biological specimens to be obtained may enhance the likelihood of prosecutions when sexual assault is suspected, without compromising the dignity of a victim who would be unaware of the procedure and lacked capacity to consent or refuse.

[48] I hope this report has been of assistance to the Inquiry.

Yours sincerely



**A/Prof Danny Sullivan**  
Consultant Forensic and Adult Psychiatrist