

The Special Commission of Inquiry
into LGBTIQ Hate Crimes

TENDER BUNDLE HEARING OF 10 OCTOBER 2023

Concerning the death of Ernest Head

Submissions on behalf of the Commissioner of Police

Introductory

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 10 October 2023 in relation to the death of Ernest Allan Head.
2. These submissions should be read together with the submissions filed in the other “documentary tender” cases and the Investigative Practices Hearing conducted by the Inquiry.

Ernest Head

Circumstances of death

3. On 22 June 1976, Mr Head's body was found in his unit in Summer Hill. He was naked, lying face down in the kitchen with extensive stab wounds. He was undoubtedly the victim of a homicide (CA, [4]). Mr Head was last seen alive at about 6pm on 17 June 1976. He likely died that evening or early the following morning.
4. Mr Head was a gay man. Investigating police were aware of this at the outset.¹ Counsel Assisting acknowledge that this did not lead to any bias which impacted upon the quality or extent of the police investigation; no appropriate line of enquiry was not pursued (CA, [170]).
5. Dr Thomas Oettle conducted a post-mortem examination of Mr Head's body on 23 June 1976. Dr Oettle's report² indicated that Mr Head died “about 5 days” prior to autopsy (approximately 18 June 1976). The cause of death was listed as stab wounds of the chest and abdomen.³ The murder weapon could have been a very sharp knife, possibly a butchers

¹ See for example Statement of I454 dated 23 June 1976 at [2] (SCOI.11039.00117).

² Autopsy Report of Dr Thomas Oettle, 17 August 1976, p. 1 (SCOI.85765).

³ Autopsy Report of Dr Thomas Oettle, 17 August 1976, p. 1 (SCOI.85765).

boning knife, approximately 18 cm in length and 2 cm wide at the base of the blade.⁴

6. An inquest was conducted on 16 December 1977. Coroner Leonard Nash found that Mr Head had “died from stab wounds of the chest and abdomen wilfully inflicted by a person or persons unknown” at his home in Summer Hill on 17 June 1976.⁵

Adequacy of police investigations

7. Counsel Assisting describe the initial investigation as thorough (CA, [16]). As noted by Counsel Assisting, police pursued multiple lines of inquiry and interviewed more than a hundred people in the course of that investigation.⁶ Counsel Assisting make no criticism of the initial investigation.

Exhibits

8. Counsel Assisting state their principal concern regarding Mr Head's case relates to the management of exhibits (CA, [171]).
9. Investigating officers submitted 53 items for forensic testing by DAL.⁷ The testing focused on blood grouping. DNA testing was neither available nor foreseeable at the time.
10. Three non-filtered cigarette butts and a part used cigarette butt were sent to the manufacturer of Benson and Hedges Super Virginia cigarettes for examination (CA, [126]). These cigarette butts included the largest cigarette butt found in the ashtray at Mr Head's unit (which was the subject of testing by the manufacturer) and three other butts, which were not required by the manufacturer.⁸ These latter three butts were then stored in the NSWPF file for the matter.⁹ These appear to be the three cigarette butts which have since been located. It is presumed that the cigarette butt retained by the manufacturer was consumed as part of the testing undertaken by the manufacturer.
11. The balance of the exhibits have not been located. The exhibits which appear to no longer be available are the following:
 - a Penile and anal swab from Mr Head.
 - b Blood scrapings taken from various locations within Mr Head's apartment.

⁴ Bundle of P109 Report of Occurrence records, 25 June 1976, p. 12 (SCOI.85764).

⁵ Findings of Coroner Nash, Inquest into the death of Ernest Head, 16 December 1977 (SCOI.11039.00008).

⁶ Statement of Detective Sergeant Albert McDonald dated 14 November 1997 (SCOI.11039.00021).

⁷ Certificate of Paul Connellan, 17 September 1976, pp. 1 – 3 (SCOI.11039.00036).

⁸ Bundle of P109 Report of Occurrence records, 13 July 1976, p. 15 (SCOI.85764).

⁹ Bundle of P109 Report of Occurrence records, 13 July 1976, p. 15 (SCOI.85764).

- c The blood, and hair samples taken respectively from I462, I454 and Mr Head and hair samples seized from Mr Head's unit.
 - d Clothing worn by I454 and I462 and items of clothing seized from Mr Head's unit.
 - e Gramophone.
 - f 'Gerber French' knife and 'Gerber Shorty' knife.
 - g Orange/white sponge, green/white dish washer, various bedding linen and a towel.
 - h Three non-filtered cigarette butts.
 - i Plastic bag from second bedroom.
12. Counsel Assisting suggest that they have been 'lost'.
13. The material presently available does not indicate whether or not certain exhibits were consumed as part of the initial testing. That said, Dr David Bruce of FASS observes in his Expert Certificate dated 30 May 2023 (obtained by the Inquiry) that grouping and other chemical testing required a very large amount of sample and may have totally consumed the biological stains available on the exhibits.¹⁰
14. It is not clear what has happened to the missing exhibits which were not consumed as part of the testing process. However, the evidence tendered by the Inquiry indicates that – generally speaking – sometimes exhibits are not returned to the NSWPF but are retained by FASS.¹¹ The evidence does not indicate one way or another in the present case whether some or all of the exhibits now unable to be located were retained by DAL or returned to the NSWPF after the initial testing in 1976.
15. Notably, certain hair samples were said to have been retained by DAL with a view to being examined at a later date "if deemed necessary".¹² It is not clear which agency was responsible for, and where those samples were stored, as part of their retention. It is possible that they were retained by DAL (but it is also possible that they were returned to the NSWPF). These are the only items which are referred to in Mr Connellan's certificate specifically as being retained. The balance of the exhibits were subjected to grouping and other chemical testing (being the form of testing referred to by Dr Bruce).
16. The Commissioner of Police agrees with the submission of Counsel Assisting that it is

¹⁰ Expert Certificate of Dr David Bruce, 30 May 2023, p. 2 (SCOI.85120).

¹¹ Statement of Nigel Warren dated 29 March 2023 at [11.f] (NPL.0145.0001.0014).

¹² Certificate of Paul Connellan, 17 September 1976, p. 5 (SCOI.11039.00036).

regrettable that the exhibits are not now available.

17. That said, it is appropriate to note that the evidence suggests that all forensic testing that could be conducted on the exhibits at that time was undertaken (with the possible exception of the hair samples which were provided to DAL – however, once again, the available material does not indicate why testing was not conducted on the hair samples at the time they were provided to DAL in 1976).
18. It is also appropriate to note Assistant Commissioner Rashelle Conroy's evidence during the Investigative Practices Hearing that the 1976 instruction permitted an exhibit to be destroyed after it had been analysed.¹³
19. It is, of course, accepted that a record of any destruction of exhibits should have been made – though having regard to the fact that the death occurred 47 years ago, it is not possible to determine whether the subsequent disposal of such a record (if one was made) would itself have breached proper police practice.
20. The initial investigation occurred almost half a century ago. The Inquiry has received evidence and submissions (in the context of other deaths into which the Inquiry has inquired and during the Investigative Practices Hearing) about the prevailing forensic technology, including knowledge of that technology. DNA testing did not exist in 1976, could not have been foreseen at that time, and did not form part of routine police practice for more than 20 years thereafter.
21. Counsel Assisting hypothesise that one possibility is that the perpetrator had sexual intercourse with Mr Head in the bedroom before embarking on a frenzied and panicked attack on him. Counsel Assisting state in their written submissions that forensic analysis of the exhibits, including the penile and anal swabs, would have been able to positively confirm or exclude this theory. While there is some doubt as to whether forensic analysis alone “would have been able to confirm or exclude this theory” (cf CA, [161]), the theory certainly arises as a possibility on the evidence, and the absence of the exhibits undoubtedly impedes an effective consideration of this theory.

Knife located in 1977

22. On 27 May 1977, a knife was located amongst cardboard rubbish in the area behind the units where Mr Head had been killed. This knife was handed to police. Counsel Assisting

¹³ Transcript of the Inquiry, 4 July 2023, T4838.22-27 (TRA.00072.00001).

state that the lack of records regarding the whereabouts of this knife raises a concern about proper exhibit management (CA, [127]).

23. In general terms, and subject to the observations made at [18] – [19] above regarding the other exhibits, the Commissioner of Police agrees that it is regrettable that there is not now any record available which confirms the whereabouts of the knife.

Delay in identification of Mr Simsek

24. Handprints in blood were observed by Senior Constable Munday on his inspection of Mr Head's unit on 23 June 1976. Sergeant Stone conducted the fingerprint examination of the unit, and identified that two of these were palmprints suitable for identification.¹⁴ Those palmprints were checked against approximately 200 elimination prints, but no matches were identified (CA, [134]).
25. Mr Simsek's record set of fingerprints were taken at the Newtown Police Station on 27 July 1980.¹⁵ This was in respect of an unrelated property damage incident. There was no suggestion available to officers at the time that Mr Simsek was in any way linked with Mr Head's death.
26. The first rudimentary palmprint matching system was not operational until 2001 (CA, [182]). This was two years after Mr Simsek died and 21 years after Mr Simsek's prints were obtained.
27. There is no suggestion that there was any failing on the NSWPF's part as a result of Mr Simsek's palmprint not being matched to the palmprint at found at the scene before he died. There was no other evidence available to police which would have alerted them to Mr Simsek being a potential match to the palmprint found at the scene.
28. The palmprints from the crime scene were the subject of further examinations by the UHT in 2002, 2004 and 2005 (including requests for testing by foreign agencies which continued into 2007). The palmprints were not matched to Mr Simsek during those further examinations. Counsel Assisting accept that this was due to the limitations in fingerprint identification technology at the relevant times, not due to any shortcomings on the part of police (CA, [187]). Counsel Assisting fairly recognise that "no criticism should be made of the NSWPF for failing to match the bloody palmprint to Mr Simsek at the time of each of the

¹⁴ Statement of Sergeant Robert William Stone dated 16 November 1977 (SCOI.11039.00111).

¹⁵ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023, [8] (SCOI.85263).

earlier UHT reviews.”

29. As Counsel Assisting acknowledge and accept, there have been a number of technological and procedural limitations which may have, either taken singularly or in combination, contributed to the palmprint found at the scene at Mr Head's unit not being matched to Mr Simsek when reviews were conducted prior to 2023.¹⁶
30. Further, due to the practices at the time, the palmprint obtained from Mr Simsek in 1980 did not include the lower segment of Mr Simsek's palm.¹⁷ The unidentified palm impressions described as B(2) and B(3) taken from Mr Head's unit are impressions of the lower segment of the palm. These were never able to be compared to Mr Simsek's palmprint due to the lack of comparable area in the record set of fingerprints for Mr Simsek.¹⁸
31. Starting in 1999, all hardcopy fingerprint records were being converted from binary to greyscale. The conversion of over 2.4 million fingerprint records was carried out by external service provider, SAGEM.¹⁹ Mr Simsek's prints appear to have been one of those 2.4 million records. The conversion of records involved scanning the hardcopy fingerprint cards to which the quality was determined by the current technology. The conversion process was undertaken for the fingerprint record for Mr Simsek.²⁰
32. The evidence indicates that the ability of an automated fingerprint system to match a fingerprint is highly reliant on the accuracy of its matching fingerprint algorithm.²¹ The accuracy of a fingerprint algorithm is affected by the quality of fingerprint images, which are subsequently digitised and subjected to a minutiae extraction process. The accuracy of a fingerprint search is substantially dependent on the ability of the system to align the features in the known fingerprint to features in the unknown fingerprint. The greater the number of minutiae pairings in agreement, the higher the likelihood of a resulting database match. In searching for minutiae pairings, the algorithm is adversely affected by displacement and rotation, distortion and pressure, or skin condition differences at the time of capture.²²
33. The unidentified palmprints from Mr Head's unit were reviewed on five separate occasions between 2002 and 2007, including reviews by foreign law enforcement partners.

¹⁶ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023, [11] (SCOI.85263).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

34. From 2010 to 2013, the National Automated Fingerprint Identification System (**NAFIS**) underwent multiple technical capability upgrades, making it significantly more accurate when conducting new searches of latent fingerprints against the database. In February 2015, there was a further upgrade to the V11 matcher which incorporated a new algorithm. The upgrade reinitiated the minutiae extraction of fingerprint records, providing a more accurate coding of the records on the database. This was especially effective for palmprint record impressions which were particularly subject to spurious minutiae extraction. In addition, the new algorithm provided greater accuracy and matcher capability for future searches. However, and importantly in the context of the timeframe in which Mr Simsek's palmprints were matched to the print from the scene, latent fingerprints registered on the system were not able to be automatically re-searched against the database following this update.²³
35. Although the V11 matcher technology was available from 2015, the NAFIS did not have the capability to automatically re-search latent or record prints already on the database (CA, [188]). The search of the latent fingerprint needed to be manually initiated by a fingerprint examiner.²⁴
36. When the relevant palmprint from Mr Head's unit was re-searched in March 2023, the NAFIS system was substantially more technically capable of identifying an accurate candidate for matching and less affected by the presence of spurious minutiae than previous iterations.²⁵
37. Counsel Assisting point out that a forensic opportunity may be lost if no search of a latent fingerprint is initiated against existing record prints following upgrades in technology (CA, [193]). Counsel Assisting suggest that the 2015 upgrade to V11 ought to have prompted the UHT to re-submit any unidentified latent print for re-examination.
38. Having regard to the available technology and records, there were (and are) significant practical impediments to the approach suggested by Counsel Assisting at CA [193]. In particular, as presently instructed, we understand that after learning of the relevant technological advance, the UHT Review Team would have been required to work through all the extant unsolved cases in order to identify which cases have fingerprint evidence. Those identified with fingerprint evidence would have needed to be provided to FETS, where

²³ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023, 4 (SCOI.85263).

²⁴ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [16] (NPL.9000.0034.0001).

²⁵ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023, [12] (SCOI.85263).

a manual search would have been performed to establish which cases have unidentified latent prints. These prints would then have needed to be scanned into the NAFIS to be searched against the available prints on that system. Should the Inquiry be assisted by further evidence in relation to this process, the Commissioner of Police would be pleased to facilitate its provision.

39. The evidence available to the Inquiry is that all record prints that are uploaded to the NAFIS are subject to a Tenprint to Unsolved Latent (**TP/UL**) search. This is an automatic search of the *newly entered* fingerprint data against all unidentified latent fingerprint records previously stored for matching on the Unsolved Latent database. The search provides a list of unidentified latent fingerprints for comparison which is processed by a fingerprint examiner. A TP/UL search is conducted each time a record set of fingerprints is captured or can be manually initiated by an examiner. If an individual has multiple records on the database, a TP/UL search will be initiated each time with the newly entered fingerprint data.²⁶
40. Notably, the only set of record prints for Mr Simsek on the NAFIS database was a conversion set of prints. This form of digital prints was only added to the database for future searching.²⁷
41. The Third Expert Certificate of Kate Reid states that the TP/UL process was not initiated on record prints until a later date. Consequently, the TP/UL process was never initiated for the single record on the database for Mr Simsek.²⁸
42. The evidence tendered before the Inquiry indicates that, unfortunately, there are currently no NAFIS capabilities to flag a latent record for automatic and/or periodic re-search against the person record database.²⁹
43. Finally, it is noteworthy that there are currently no capabilities for automatic and/or periodic searching of the unidentified fingerprint records specified for re-examination by the Inquiry, with the exception of TP/UL searches.³⁰ All unidentified latent prints re-examined at the request of the Inquiry have been registered indefinitely on the Unsolved Latent database using the most globally accurate matching algorithm available. All future record prints captured from any persons will be searched against the Unsolved Latent database.

²⁶ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [15] (NPL.9000.0034.0001).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [16] (NPL.9000.0034.0001).

³⁰ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [18] (NPL.9000.0034.0001).

SF Palace and UHT reviews

44. Various reviews of the matter were undertaken by the UHT between 2002 and 2008. There is no suggestion by Counsel Assisting that the action taken by the UHT at those times was deficient in any way.

Strike Force Parrabell review

45. This matter was not reviewed by Strike Force Parrabell.

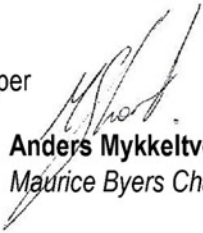
Anti LGBTIQ bias

46. The Commissioner of Police agrees with Counsel Assisting's submission that there is reason to suspect that Mr Head's death was motivated in whole or in part by LGBTIQ bias (CA, [197]).
47. While this matter was not considered by SF Parrabell, it is appropriate to note that the considerations that appear to have informed Counsel Assisting's assessment of possible bias align closely with the factors considered during the reviews SF Parrabell undertook of other cases.
48. In particular, as has been observed in a variety of other "documentary tender cases" and in connection with Public Hearing 2, the Commissioner of Police agrees that the potential presence of a robbery motivation would not exclude the possibility that LGBTIQ bias played a role in Mr Head's death (CA, [196]).


Manner and cause of death

49. The Commissioner of Police supports the submissions made by Counsel Assisting as to the manner and cause of the death, namely that Mr Head died on or about 17 June 1976 in Summer Hill from wilfully inflicted stab wounds of the chest and abdomen (CA, [199]).

per


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