



CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Rachel Antonio**

TITLE OF COURT: Coroners Court

JURISDICTION: Bowen

FILE NO(s): 2011/3794

DELIVERED ON: **28 July 2016**

DELIVERED AT: **Bowen**

HEARING DATE(s): 21st – 25th July 2014
1st – 5th September 2014
15th – 17th June 2015

FINDINGS OF: Magistrate O'Connell, Central Coroner

CATCHWORDS: Coroners: inquest into suspected death, 16 year-old child reported missing in 1998, no body ever located, review of evidence gathered during investigation

REPRESENTATION:

Counsel Assisting: Mr J M Aberdeen

Antonio Family Ms B Hartigan (*pro bono*)

Mr Robert Hytch Mr H Walters (instructed by Ruddy, Tomlinson & Baxter)

Coronial Findings

Rachel Joy Antonio

- [1]. Rachel¹ was a 16-year-old young girl who disappeared on the evening of 25 April 1998 when she failed to return home after being dropped off at approximately 6.00 PM to attend a movie theatre located at Queens Beach, Bowen, Queensland. In the more than 18 years that have passed since that evening, Rachel has neither been seen², nor heard from.
- [2]. This inquest is an enquiry into her disappearance, as a “suspected death”. A number of facts can be established as to what occurred leading up to Rachel's disappearance, but a number of conclusions, relying only upon the evidence presented at the inquest, shall need to be drawn. This can occur only where there is sufficient, reliable, and credible evidence to satisfy me on that issue.
- [3]. The nature of Rachel's disappearance has, understandably, captured a significant amount of attention in the Bowen community, and indeed of many people in North Queensland, in the 18 years since her disappearance.
- [4]. As stated during the inquest I could readily think of a number of scenarios to explore in relation to Rachel's disappearance, and these cover situations ranging from the most innocent, that Rachel has simply ‘run away’ and is discreetly living elsewhere, to the most sinister, that Rachel has died at the hands of another.
- [5]. In considering the evidence presented at the inquest I have always kept uppermost that I need to keep an open mind as to any valid explanation for Rachel's disappearance. I appreciate that as the inquest occurred 17 years after Rachel was first reported missing, that certain witnesses may have difficulties in recalling precise factual matters. I have been very careful during the inquest to observe each witness as to the manner in which they gave their evidence so that I could form an opinion on the reliability, or not, of their evidence. Rumour, innuendo, or mis-information must be disregarded by me in coming to a conclusion, if I am able, as to what has occurred to Rachel.
- [6]. The inquest occupied 12 days hearing evidence alone, which is extraordinary for an inquest, but is understandable when considering that the inquest was presented with 367 witness statements, more than 2600 pages of court transcripts from prior proceedings, seven recorded interviews with the police, four days of Queensland Crime Commission hearings, and examined 60 witnesses. Accordingly it has proved a very time-consuming, and methodical process, to consider all of the evidence presented and then reach my conclusions. As it is an inquest, and not a criminal trial of any person, or persons, I have had the benefit of a great deal more information than has previously been tested in, or available to, a court.

¹ Rachel's parents, Mr & Mrs Antonio, gave permission for me to refer to her by her given name.

² In these findings I will deal with reported sightings of Rachel by various witnesses.

Tasks to be performed

- [7]. It is convenient for me to set out the tasks I am required to undertake under the *Coroners Act 2003*. As I often state, my primary task³ under the *Coroners Act 2003* is to make findings as to who the deceased person is, how, when, where, and what, caused them to die⁴. In Rachel's case it is an inquest into the disappearance of a person so I must consider a number of possible explanations for her disappearance.
- [8]. My second task is, whenever appropriate, to comment on anything connected with the death⁵ investigated at an inquest that relates to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future. These are conveniently termed Coroners Comments, or Recommendations⁶.
- [9]. My third task is that if, from any information obtained while investigating a death, I reasonably suspect a person has committed an offence then I must give that information, for an indictable offence, to the Director of Public Prosecutions, or for any other offence, to the Chief Executive of the Department administering the applicable legislation⁷.

The nature of an Inquest under the Coroners Act 2003

- [10]. With the commencement of the *Coroners Act 2003* there was a very significant change to the fundamental purpose, or objective, of an inquest. In Queensland an inquest is no longer directed to apportioning guilt, rather it is a fact-finding exercise. It is neither a prosecution⁸, nor a trial. The present nature of an inquest has been conveniently stated as:-

“In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use”⁹

³ Other tasks are ancillary: see Muir J, as he then was, in *Doomadgee and Anor v Clements and Others* [2006] 2 Qd R 352 at 360 [28]; [2005] QSC 357 at [28].

⁴ *Coroners Act 2003* s. 45(2)(a) – (e) inclusive.

⁵ If I in fact find that a death has occurred.

⁶ S.46 *Coroners Act*.

⁷ There is no power under the *Coroners Act 2003* for a coroner to commit a person for trial for any alleged offence. That power was abolished in 2003 and replaced with the referral process for investigation and perhaps prosecution in the usual way (s.48 *Coroners Act*).

⁸ Indeed a Coroner is specifically prohibited from making any statement about civil liability or criminal responsibility, see ss. 45(5) and 46(3).

⁹ *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625; *The Times*, 9 July 1982.

[11]. Whilst this statement regarding the nature of an inquest was made in England in 1982, and made well prior to the present Queensland *Coroners Act 2003*, it is still very relevant to the nature of an inquest under the current Queensland law. It has been cited with approval in Australia, and indeed in Queensland¹⁰.

[12]. Since an inquest is a fact-finding exercise, or enquiry, I have approached the inquest in that way and heard evidence to deal with a number of possible explanations for Rachel's disappearance. My approach to the inquest has been to consider possible explanations for her disappearance which included:-

1. she chose to disappear and is discreetly living elsewhere;
2. she chose to disappear and is being actively hidden by others;
3. she went off on an innocent adventure of her own and has died a natural death, for example a cardiac event, yet her body has not been located;
4. she went off on an innocent adventure of her own and met with an accidental death of her own doing, for example drowning, and her body has not been recovered;
5. she went off on an innocent adventure of her own and died, yet her death has been concealed;
6. she has met with an unfortunate accident in which another has caused her death, for example a motor vehicle accident in which she was a pedestrian, which incident is unreported;
7. she committed suicide;
8. she has died at the hands of another person.

I will address the evidence in relation to each of these possibilities below in my findings.

Coroners Court Standard of Proof of Evidence

[13]. Section 37(1) of the *Coroners Act 2003* lays down the basic proposition with respect to the receipt of evidence at inquest:

“The Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.”

¹⁰ Quoted by Toohey J in *Annetts v McCann* (1990) 170 CLR 596, at 616, and cited with approval by McMeekin J in *Walter Mining Pty Ltd v Coroner Hennessey and Others* [2009] QSC 102 at para [18]; [2010] 1 Qd R 593, at 596-597.

- [14]. The first thing to notice about the subsection is that, by using the expression “not bound”, it does not require that the Court have no regard whatsoever to the “rules of evidence”:

“The tribunal is not bound by the rules of evidence ... and may inform itself in such a manner as it thinks appropriate. This does not mean that the rules of evidence are to be ignored. The more flexible procedure provided for does not justify decisions made without a basis in evidence having probative force.”¹¹

- [15]. It must also be borne in mind that the rules of evidence are not lightly to be dispensed with in the tasks of both receiving and weighing evidence at inquest:

“The exercise of the Tribunal’s freedom from the rules of evidence should be subject to the cautionary observation of Evatt J in *R v War Pensions Entitlement Appeal Tribunal; ex parte Bott* that those rules ‘represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth’. It is a method not to be set aside in favour of methods of inquiry which necessarily advantage one party and disadvantage another. On the other hand, that caution is not a mandate for allowing the rules of evidence, excluded by statute, to ‘creep back through a domestic procedural rule’ “.¹²

- [16]. Secondly, the expression “rules of evidence” is not further explained within the *Coroners Act 2003*¹³. But it must be qualified, in the first place, by other sections of the Act which lay down specific procedures with respect to matters which usually fall within the expression “rules of evidence”. An example is the specific procedure prescribed by section 39 of the Act which governs the issue of self-incrimination.

- [17]. Further qualifications may arise, by implication, from the inherent nature of the inquest under the Act. The Coroners Court is a Court of Record¹⁴; it contemplates representation of interested parties by legal practitioners¹⁵; it assumes a process involving formal public hearings¹⁶, the taking of evidence upon oath¹⁷, and the cross-examination of witnesses¹⁸; it is subject to a system

¹¹ *Rodriguez v Telstra Corporation Pty Ltd* (2002) 66 ALD 579, per Kiefel J at 585 [25], on section 33 of the *Administrative Appeals Tribunal Act 1975* (Cwth). See also *Hehir v Financial Advisers Australia Pty Ltd* [2002] QSC 092, per A Wilson J, at [18]: “While the Tribunal was not bound by the strict rules of admissibility, it would have erred in law had it acted on evidence that was not logically probative”, in respect of s 208 of the *Anti-Discrimination Act 1991*.

¹² *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390, per French CJ at 396 [17]. See also the judgment of Muir JA (with whom McMurdo P and Chesterman J agreed) in *Lillywhite v Chief Executive, Liquor Licensing Division* [2008] QCA 88 at [34]; 100 ALD 586 at 594: “...it is not the case that the tribunal acting under s 47(4) of the *Commercial and Consumer Tribunal Act* should act on the premise that the rules of evidence apply unless, for sound reason, their application is dispensed with. Such an approach imposes a procedural limitation on the tribunal which is not to be found in the language of the evidentiary provision and, indeed, is inconsistent with it”.

¹³ “The few words by which the rules of evidence are typically dispensed with are deceptively simple”: Mr Justice Giles, “Dispensing with the Rules of Evidence” (1991) 7 (3) *Aust Bar Review* 233-251, at p 247.

¹⁴ Section 64(1) *Coroners Act 2003*.

¹⁵ Section 36(4) *Coroners Act 2003*.

¹⁶ Sections 31 and 32 *Coroners Act 2003*.

¹⁷ Section 37(4)(b) *Coroners Act 2003*.

¹⁸ Section 36(5) *Coroners Act 2003*.

of review by a superior Court¹⁹; it has the power to punish for contempt of Court²⁰; and it is presided over by a Coroner who holds judicial office²¹. In addition, a Coroner is bound, in all of his or her duties, by the requirements of natural justice²².

- [18]. Taking into account all of these factors, there can be no room for doubt that, although the issue of a standard of proof commonly finds its place within the expression “rules of evidence”, the Legislature, in passing the *Coroners Act 2003*, contemplated that the findings to be made by a Coroner would be made by reference to a legally-recognized standard of proof. It is also clear that the common law recognised only two standards of proof²³ – the criminal standard (beyond reasonable doubt) and the civil standard (usually described in terms of the balance of probabilities).
- [19]. The *Coroners Act 2003* was passed with the specific intention of separating the coronial process from the criminal justice process²⁴; and it follows that the applicable standard of proof at an inquest must be the civil standard *ie* upon the balance of probabilities²⁵.
- [20]. Pursuant to section 14 of the Act, the State Coroner is empowered to make Guidelines for the assistance of Coroners in carrying out their duties. Chapter 9 of these Guidelines reflects the appropriate standard of proof in respect of coronial findings at inquest. Importantly, they also draw attention to the potential, with respect to issues which may carry adverse consequences for a particular person, for the Coroner to be satisfied of their existence to a higher level of satisfaction:

¹⁹ Section 50 *Coroners Act 2003*, upon the grounds *inter alia* that there was no evidence to support a finding, or that a finding could not be reasonably supported by the evidence.

²⁰ Section 42 *Coroners Act 2003*, applying section 50 of the *Magistrates Courts Act 1921*.

²¹ Taking into account the fact that the Court is a Court of Record, and noting sections 70, 78 and 82 *Coroners Act 2003* (*cf* section 83, under which no appointments have yet been made); and section 88(1) (granting Judicial Immunity).

²² *Annetts v McCann* (1990) 170 CLR 596.

²³ *Briginshaw v Briginshaw* (1938) 60 CLR 336, *per* Dixon J at 360.

²⁴ "Effectively, we have converted the character of the coronial system from one that investigates criminal charges, in which case the privilege against self-incrimination would clearly still be justified to apply, to one that does not result in the coroner committing people for trial at all. That will be the subject of a separate police investigation in relation to the actions of any other person that might have given rise to the death. The coroner is concerned to establish the cause of the death, not necessarily who specifically was responsible.....the philosophy of the new coronial system that we are establishing by this bill is to separate out investigations into criminal liability from the coronial system of inquiry, the coronial system of inquiry being to get to the truth that underpins the cause of death and prevent future similar deaths rather than to identify particular individuals for their criminal behaviour": *Queensland Parliamentary Debates*, 03/12/2002, *per* the Hon R Welford A-G, p 5222.

²⁵ This accords with the opinion expressed by the authors of Australia's leading treatise on coronial law, Mr Ian Freckelton QC and Dr David Ransom, *Death Investigation and the Coroners Inquest* (2006) at pp 554-555, where the authorities from other jurisdictions supporting the proposition are collected. See also *The Laws of Australia* (WestLaw) at [20.10.1340]: "The civil standard of proof is to be applied in Australian coronial inquests; that is to say matters should be established on the balance of probabilities, although strong evidence will be needed to displace this burden where serious allegations are involved".

“The particulars a Coroner must if possible find under s45 need only be made to the civil standard but on the sliding *Briginshaw* scale. That may well result in different standards being necessary for the various matters a coroner is required to find. For example, the exact time and place of death may have little significance and could be made on the balance of probabilities. However, the gravity of a finding that the death was caused by the actions of a nominated person would mean that a standard approaching the criminal standard should be applied because even though no criminal charge or sanction necessarily flows from such a finding, the seriousness of it and the potential harm to the reputation of that person requires a greater degree of satisfaction before it can be safely made”.

- [21]. To take one particular example of what is called the “sliding” scale of proof – the commission of a crime - Justice Dixon, in *Helton v Allen*²⁶, endorsed a direction by the trial judge that:

“When a crime is charged in a civil trial *it must be proved strictly* because the degree of proof required in a civil trial *depends upon the magnitude of the thing that is in issue*, and when a crime is in issue you will not lightly find that a crime has been committed, and *according as the crime is grave you shall require a greater strictness of proof*”.

[Emphasis added]

- [22]. Perhaps the most helpful explanation of the nature of the “stricter proof” which may be required before a finding carrying serious consequences can be made was that provided by Justice Dixon himself in *Briginshaw v Briginshaw*²⁷:

“The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency”.

- [23]. In an inquest, of course, there can be no suggestion of any finding that a particular person has committed²⁸ a crime, or that a person may be civilly liable for something²⁹; but the strictness of proof referred to in *Helton v Allen* applies equally to any coronial findings of fact from which it could be inferred that a

²⁶ (1940) 63 CLR 691, at 711.

²⁷ (1938) 60 CLR 336, at 361-362.

²⁸ Legal practitioners will appreciate this distinction, I trust that members of the media do so as well in any coverage they may make of these Findings.

²⁹ Section 45(5) *Coroners Act 2003*. This prohibition also applies to the making of comments by a Coroner, under section 46: s 46(3).

person might have committed an offence, or might have done something which would adversely reflect upon that person's character.

- [24]. The State Coroner's Guideline was cited, without adverse comment, by the Court of Appeal in *Hurley v Clements*³⁰. The Court did, however, draw attention to the difference between the civil and the criminal standards of proof insofar as they applied to findings based on circumstantial evidence, a distinction of crucial importance in the circumstances of *Hurley's* case³¹:

“... the application of the sliding scale of satisfaction test explained in *Briginshaw v Briginshaw* does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not.”

- [25]. Whenever I have reached a conclusion, or drawn inferences, I been mindful to weigh up, and if able exclude, any other reasonable possibility which may also explain the circumstances as I find them³². I have kept these aspects of the standard of proof uppermost in mind as I considered the matter, and the tasks I am required to perform.

Background events

- [26]. There are a number of elementary background events up until the time of Rachel's last being seen. None of these matters are really in issue. As they provide background information, from which certain conclusions can be drawn, it is important I set out these matters briefly³³.
- [27]. Rachel was the fourth³⁴ child of Ian and Cheryl Antonio. She grew up in Bowen and had a very routine childhood with no major issues or incidents whatsoever. She was particularly good at sport in her primary school years and carried this through to her high school years³⁵. She was attending Bowen State High School where her extracurricular activities included air cadets and surf lifesaving. Air cadets were important to her. Clearly she enjoyed this activity, so much so that she intended to pursue a career in the defence forces³⁶. Indeed she was to attend

³⁰ [2010] 1 Qd R 215, at 232.

³¹ At p 233. See also *Bradshaw v McEwan's Pty Ltd* (1951) 217 ALR 1 (HCA), at 5 *per* the Court.

³² And recently the Supreme Court has observed, in relation to a suspected death and forfeiture of bail surety, that ‘The evidence must be enough to enable the court to feel an actual persuasion that a particular fact is so’: *Director of Public Prosecutions (Cth) v Turner and Anor* [2016] QCS 107 at [51].

³³ Where particular matters become more relevant I deal with them later in greater detail.

³⁴ Ian and Cheryl Antonio had a child named Rachel, born 27/11/1971, but who died (having been premature) after just 21 hours (see Exh B.009C paragraph 3). They also named Rachel Joy Antonio, the subject person of this inquest, with the same given names. Clearly the name is very dear to them, and it was evident that Rachel Joy Antonio was very dear to them, perhaps through losing a child by that name earlier. I trust that Mr & Mrs Antonio do not object to my including this information in the findings. It is there for entirety of the circumstances. I hope that any media reporting of this particular aspect of the background circumstances is treated with the appropriate sensitivity it deserves.

³⁵ See *eg* Exh B.090B p 1 para 3, where Mrs Terry Greenoff, who knew Rachel during her earlier years, expressed the view that by age twelve Rachel would have been “one of the best sprinters in North Queensland for her age”.

³⁶ Rachel was interviewed four months before her disappearance by an officer from Defence Recruiting: Exh B.022, p 1.

a particular course with the air cadets just three weeks after the date she was last seen. With her lifesaving she displayed aptitude and ability, regularly competing for her Bowen club at inter-club surf lifesaving carnivals. Whilst only fifteen years old she was working her way up through her levels of proficiency to obtain higher qualifications in lifesaving. Her air cadets and lifesaving activities demonstrated that she had discipline, dedication, and drive, to complete achievements.

- [28]. Rachel was described, and I accept, as a quiet girl at school, who was successfully passing her school grades³⁷. While she was considered a quiet student her friends described that she sometimes had a ‘mischievous streak’, where she could play pranks or practical jokes³⁸. In my experience this is not too unusual in a 15-year-old girl, and it was never suggested that any prank brought the attention of police or other authorities. While she may have been mischievous on occasions there was never a suggestion that she was in any way considered an ill disciplined student, rather simply mischievous on occasions, and only infrequently.
- [29]. Significantly Rachel was very much loved by her family, and she had a particularly strong attachment to her mother. I accept that fact, and I recognise that there can be a strong attachment between mother and daughter even if the teenage daughter might not share every detail, particularly intimate details, of her life.
- [30]. Since she was last seen on the evening of 25 April 1998 there has been no contact whatsoever by Rachel with her family, friends, or authorities³⁹. There was also simply no credible evidence⁴⁰ whatsoever that Rachel intended to leave home that evening intending to live elsewhere.

Certain contentious issues to resolve

Diary

³⁷ The exhaustive nature of this inquest went so far as to have available her high school reports (Exh J.25), and even the Bowen High School Yearbook for 1998 (Exh J.39).

³⁸ Mr Rodney Egan, a lifesaver who was good friends with both Rachel and Mr Robert Hytch, confirmed this view, later saying: “I would describe Rachel as a quiet person, but on occasions I have known her to go to[o] far. By this I mean she sometimes starts off[f] joking with someone, but then continues and goes to[o] far”: Exh B.065, para [2].

³⁹ ‘Proof of life’ checks with government agencies such as the Department of Immigration and Centrelink, financial institutions, and police services Australia wide established that there had been no contact whatsoever by Rachel, nor any instance which might be referable to her: see Exh B.080.

⁴⁰ I specifically reject any assertions, or suggestions, that she was at that time in any way unhappy with her home life; on the evidence I find to the contrary, that she was very happy and comfortable in her then life.

- [31]. The police located a handwritten diary⁴¹ during their search of Rachel's bedroom. This was located in the days just after she disappeared. It was located in a secreted position⁴². Like most diaries it contained personal thoughts on certain events.
- [32]. The diary and its' entries were not permitted to be led as evidence in the first of the criminal trials of Mr Hytch⁴³. They were not, to my knowledge, tendered, nor even argued for tendering, at the second criminal trial⁴⁴. A coronial investigation is an entirely different process⁴⁵, and has a different standard as to the admissibility of such evidence.⁴⁶ No party suggested at the inquest that the diary and its contents could not be received into evidence at the inquest; rather one party simply requested that the reporting of its contents be restricted. Whilst an Application was made by a party on this point, I subsequently ruled that reporting on the contents of the diary was not to be restricted⁴⁷.
- [33]. Whilst the diary was admitted into evidence I have ensured I have kept in mind what weight should be given to those entries as the contents are untested against their author.
- [34]. Whilst at this time I do not digress into the individual entries I can provide a very brief overview of the diary contents. The diary entries cover a range of events of importance to a teenage girl. The entries also cover a significant period of time. The entries correlated to events which could be independently verified⁴⁸. What the evidence at the inquest supported was that the diary contained contemporaneous entries of events which had occurred involving Rachel, rather than it being a work of fiction hastily prepared in the period before she disappeared. Throughout the inquest there was a great deal of evidence given by witnesses as to their recollection of events recorded in the diaries. Allowing for the passage of some 17 years since she disappeared, a large number of witnesses⁴⁹ were able to recall events very much in line with⁵⁰, and corroborating, the events as recorded in the diaries. This assisted me in determining that the diaries were contemporaneously made by Rachel as events

⁴¹ Exh F.1 (copies) and Exh F.1A (laminated originals). The diary pages were written on loose, but dated sheets of paper, and were wrapped and taped up in a covering sheet (Exhs F.5 and F.6).

⁴² Exh B.146 p 3 para 2.

⁴³ They were not then admissible under the provisions of the *Evidence Act 1977*.

⁴⁴ The second trial started 28 May 2001. On 27 October 2000 the *Evidence Act 1977* was amended by s.50 of Act No 43 of 2000, which inserted s.93B which arguably at least would have permitted the tender of the diaries and letters. There may well be good reasons why they were not tendered, or at least argued, but this issue was not the subject of evidence.

⁴⁵ See *R v South London Coroner, ex parte Thompson*, cited at fn 9 above.

⁴⁶ s. 37 *Coroners Act 2003*. There would also have been grounds for their receipt into evidence in any civil proceeding, under s 92 of the *Evidence Act*.

⁴⁷ See my Ruling delivered 21 July 2014.

⁴⁸ Such as the Bowen Fishing Classic, or Fishing Expo, as it is sometimes called.

⁴⁹ I deal with this more specifically later in my findings.

⁵⁰ Mr Robert Hytch confirmed the 'accuracy' of one diary entry sequence of events, relating to the night of the Fishing Classic, as recorded by Rachel, when he was examined by Counsel Assisting (see T9-41 [10] - [35]); although I accept he specifically denied their walking off alone together along the beach. This certainly confirmed the accuracy of the events as recorded, leaving aside her recorded entry of any alleged intimate interaction with Mr Hytch that evening.

unfolded, rather than being some work of fiction prepared by Rachel with a sinister motive such as to extract revenge or hurt another person.

[35]. There was no doubt at all due to the circumstances of how the diary was secreted, where it was found, the handwriting, the content, and events recorded, that the diary was written by Rachel, and accordingly I find that it was.

Was there a relationship?

[36]. What I next need to determine is whether there existed a relationship between Mr Robert Hytch and Rachel Antonio. By relationship I mean a relationship of an intimate, and sexually active, nature. In addresses, counsel for Mr Hytch conceded⁵¹ that the diary entries, and other related evidence, did support a finding that there was a relationship between Mr Hytch and Rachel, and upon clarification from me as to what was meant by ‘relationship’, it was readily conceded that it was that of a sexually intimate and personal nature, not merely that of a relationship between fellow members of a surf lifesaving club⁵².

[37]. In this regard the inquest was at a distinct advantage over the two criminal trials that Mr Hytch faced. The advantages for the inquest was that evidence not presented at those criminal trials was available at the inquest⁵³. Significantly this included the diary kept by Rachel, and Rachel’s letters to Ms Alex Ginga⁵⁴, and the fact that Mr Hytch gave evidence for the first time and was able to be cross-examined⁵⁵.

[38]. The diary details certain encounters between Rachel and Robert Hytch. These encounters in the diary were explicit as to what the author recorded had allegedly occurred, when, where, and sometimes included others who were there, or she had interacted with. Without delving into the individual instances (where necessary I will detail these later on the issue of credibility), the diary entries give an account of an alleged relationship, commencing as a routine boyfriend – girlfriend relationship, before progressing to that of an intimate,

⁵¹ See T13-42 from [29].

⁵² Whilst I acknowledge the concession made by counsel for Mr Hytch (perhaps not on specific instructions), this is a coronial investigation where I am duty bound to consider the evidence and make any necessary finding, based on reliable and credible evidence before me. I cannot simply abrogate my responsibilities by relying upon concessions (if that is the correct term in this instance) made by a party’s counsel. Rather I need to take the time and make the effort, which I have, to undertake a thorough investigation, and consideration, of all the evidence, and then reach a conclusion (if there is one open to me on the evidence). In saying this I still acknowledge Mr Walters’ professionalism, in doing his duty to the court by making this concession.

⁵³ Section 37 Coroners Act 2003 permits me to receive the diary into evidence, although due to its nature I must consider the weight I afford it. There would also have been grounds for its receipt into evidence in any civil proceeding, under s 92 of the *Evidence Act*.

⁵⁴ See Exh F.2, with the envelopes in Exh F.3.

⁵⁵ Mr Hytch did not give evidence at either criminal trial; and he was not compelled to give evidence at the Queensland Crime Commission hearings, yet his family members did. His not giving evidence previously is simply his exercise of his right not to, and that is entirely his right to exercise. No adverse inference whatsoever can be drawn from that.

personal, and sexually active nature, which allegedly did then exist between her and Robert Hytch.

- [39]. Accordingly I need explore this issue further.
- [40]. Mr Hytch's evidence on whether there was a relationship was very succinct, and clear. It simply involved repeated denials⁵⁶ that there existed any intimate relationship whatsoever. The diary suggested quite the opposite, that there was a far more intimate personal and sexual relationship.
- [41]. Evidence from the diary alone⁵⁷ is, in my view of the evidence, very highly suggestive of an intimate relationship between Rachel and Mr Hytch. I have reproduced a selection of relevant entries in an annexure to these findings, marked 'Diary Entries'⁵⁸.
- [42]. In addition to the diary entries there was also evidence in the letters Rachel wrote to a close friend, Alex Ginga, who then lived in Victoria. The contents of those letters clearly supports, rather than contradicts, there being an intimate relationship with Mr Hytch. I consider those letters to be representative of Rachel's views and thoughts at that time. They were contemporaneous to the events. I observe that there was no 'attack' on these letters being false, nor was it suggested they were pieces of a clever scheme designed to later discredit Mr Hytch.
- [43]. The inquest heard sworn evidence from a number of persons on whether they observed any signs they considered demonstrated⁵⁹ that there was a relationship between the pair. What was clear was that not one witness stated that there was any explicit, or express, statement⁶⁰, that involved stated confirmation by Mr Hytch that they were in a recognised⁶¹, or publicly known, boyfriend-girlfriend relationship. Rather the evidence at the inquest, and I state this very broadly, was suggestive of a clandestine relationship. Perhaps it was clandestine due to their significant difference in age or that any relationship was specifically discouraged by Robert Hytch's father, Paul Hytch⁶², but that is not an issue I must resolve. I need to determine if there is sufficient, reliable, and creditable evidence to support a conclusion that there was or was not such a relationship at the relevant time, because if I do reach such a conclusion it is potentially highly damaging, and possibly could have significant consequences, for Mr Hytch.

⁵⁶ And denied repeatedly to Counsel Assisting, and Counsel for the Antonio family.

⁵⁷ As its author, understandably, does not give evidence

⁵⁸ No doubt some will consider the diary entries quite salacious to report. I trust appropriate consideration to the family is made before such reporting occurs.

⁵⁹ And I accept that friends and acquaintances can provide evidence of their observations, simply as lay people, of whether they saw such behaviour

⁶⁰ I specifically deal below with the alleged statements he made to Ms Nicolle Stone, a female work colleague, and to Mr Brennan Reid, a male work colleague, at the hotel where Mr Hytch worked at one time.

⁶¹ By recognised, I convey the situation where a couple attend social events in each other's company as partners, or were 'dating' as such (and it being just 1998 it could not be 'Facebook official', as it may now be termed)

⁶² See Exh 4.5, p 3 (recorded conversation with Robert Hytch 29/04/98).

(i) Flagstaff Hill Incident

[44]. The evidence included an incident at Flagstaff Hill. Flagstaff Hill is a lookout on the south-east side of Bowen. It is not a through road, nor in any way close to Mr Hytch's house, Rachel's house, Queens Beach or Horseshoe Bay, where their surf lifesaving occurred. This was an incident where Mr Andrew Phillips went as a passenger in Mr Hytch's car with Rachel⁶³. On this occasion, he observed Robert Hytch and Rachel standing together, outside the car⁶⁴, with Robert's right-hand in the right rear pocket of Rachel's jeans. It was not for a moment, rather like that of a few minutes, and he said that when Robert Hytch saw him nearby, Mr Hytch removed his right hand out of her pocket. The time spent up on Flagstaff Hill was about 20 minutes. He also commented that on the trip home the two of them appeared more than just friends by how they acted together⁶⁵. Mr Phillips was so concerned by their closeness of relationship that he raised the issue with Peter Clout who was then a senior member of the Bowen lifesaving club, as he knew Rachel's parents. Mr Phillips said that he was concerned about the relationship due to the significant age difference between Robert Hytch and Rachel. At Mr Hytch's first criminal trial it was suggested to Mr Phillips that the trip to Flagstaff Hill never occurred⁶⁶, but that was denied by Mr Phillips. In police interviews⁶⁷ Mr Hytch simply denied he had ever been to Flagstaff Hill with Rachel, for any reason, but later at the inquest agreed he may have been there with Rachel, but he simply could not recall⁶⁸.

[45]. From the evidence provided at the inquest I could see no reason why Mr Phillips would invent such a story and there was certainly never raised any suggestion of any animosity or otherwise between he and Mr Hytch⁶⁹. Interestingly, and not of insignificance regarding this incident, Mr Hytch told the police that he had never gone to the lookout at Flagstaff Hill with Rachel, as he had no reason to, because their only travel together was to or from lifesaving training, which would not require such a detour from their route. I conclude, without hesitation, that Mr Phillips was accurate in his recollection of the incident, although it is to be borne in mind that it is a small incident⁷⁰.

(ii) Hotel work colleague's comments

⁶³ Exh B.171, pp 2-4; and Exh B.171B, pp 1-3.

⁶⁴ See T3-57 at line 40

⁶⁵ T3-57 line 2.

⁶⁶ Exh C.2, p 665, line 3. Clearly that line of cross-examination must have been on instructions.

⁶⁷ Exh H.2, p 56: "...have you ever taken any other female person up the top of Flagstaff hill in your car?" A: "No"; Exh H.5, p 68: Q: "Have you ever been on Flagstaff Hill for one reason or any other reason with Rachel at any time?" A: "No, I haven't".

⁶⁸ T9-71 from [35].

⁶⁹ In Mr Hytch's first trial, Mr Phillips conceded that he "got into a little bit of trouble" with the club, for stealing its beer, and writing graffiti on the clubhouse: Exh C.2, p 653 [30]. The timing of that "trouble" is not clear, and it is noted that Mr Phillips' first statement (Exh B.171) was provided to police on 01/05/98, which pre-dated the construction of the Bowen clubhouse. Mr Phillips denied, when asked, that he was a "bit upset" with the club as a result of these troubles. As at 25/05/98, there was no lifesaving clubhouse, as such, in Bowen: see Exh B.021.

⁷⁰ The observation is not itself conclusively indicative of a relationship; rather it is merely an incident of observed behaviour pointing towards, rather than away from, a relationship.

- [46]. In addition there were certain conversations which Mr Hytch allegedly had with two co-employees at a hotel where he then worked. Stated briefly, he allegedly stated words to the effect that he then was in a relationship with a young girl. The girl was not identified by name. The first incident involved Mr Brennan Reid⁷¹. Mr Reid stated that he saw Rachel standing near Mr Hytch's car, talking with him. They were the only two at the car. As Mr Hytch went into the hotel he asked "Is that your woman?". Mr Hytch replied "Yeah, sort of seeing her". Mr Reid said that at that time Mr Hytch also had a little smile on his face, but he did not think the statement was untruthful in any way⁷². Mr Reid was not cross-examined by counsel for Mr Hytch on this allegation at the inquest⁷³. This incident was reported to have occurred in the period just prior to Christmas 1997. Mr Reid stated that he had no difficulty in confirming that the girl he saw with Mr Hytch on this occasion was Rachel⁷⁴.
- [47]. The second exchange involved Ms Nicolle Andrea Stone⁷⁵. During general conversation between them at the hotel they had a short discussion where she jokingly pointed out to Mr Hytch a girl walking past the hotel, commenting to Mr Hytch that he might be interested in her. Mr Hytch responded saying that he already had a girl, that she was younger, aged sixteen⁷⁶, and in the Surf lifesaving club⁷⁷.

Surf club and intervention warning by a friend

⁷¹ Exh B.186.

⁷² T2-67 [27].

⁷³ Mr Hytch's counsel and solicitor were unable to attend the inquest on that day. During Mr Hytch's second criminal trial Mr Reid was cross-examined on this point, and it was suggested to Mr Reid that the conversation he had with Mr Hitch was just two young blokes "having a bit of a jive" (Exh C.3, p 301 [46]). My reading of the transcript is that the reference to 'jive' is an attempt at a colloquial reference of two young males engaging in an off-the-cuff, light-hearted conversation without it having any real meaning, and is certainly not meant as a reference to the African – American dance style which originated in the United States, considered to be a variation of the Jitterbug. In evidence at the inquest Mr Reid said that he did not really understand what "having a bit of a jive" meant (T2-67 [42]), very likely because this is not a colloquial expression used by young people today, but for clarity I observe that in no way did the conversation between the two men, from the evidence I heard, appear to be in any way a light-hearted conversation made without basis, rather it was more of a simple, short conversation, but based in fact.

⁷⁴ Exh B.186, p 4.

⁷⁵ Exh B.219.

⁷⁶ I note that Rachel was then aged 15 years. From Ms Stone's statement, her cross-examination at committal (Exh C.1, p 96, from [45]), at the first trial (Exh C.2 p 619), and her cross-examination at the second trial (Exh C.3, p 261), it is clear that she and Mr Robert Hytch often had "digs" at each other, in a jocular way, while they were working together.

⁷⁷ There were no other 16-year-old girls in the surf lifesaving club for the 1997-98 surf season (see Exh B.072B, but noting that this statement was prepared in October 1998, by which time Rachel would have been 16); it was certainly not a reference to the girl Mr Hytch met at a lifesaving conference interstate (see Exh B.252).

- [48]. In addition there was various members of the Surf lifesaving club who commented that Mr Hytch and Rachel were seen leave the beach for an unexplained reason, a short time apart, and then reappear later. Each witness commented that there was no particular reason for them to leave the beach, as they were seen leaving towards the more remote areas of the foreshore, such as a rocky outcrop at the beach, and there was no particular operational patrol reason⁷⁸ that required them to go to that location at that time.
- [49]. There were also rumours⁷⁹ that Mr Hytch was seeing a young girl aged 15 or 16 years old, which led one friend, Mr John Paul Robson⁸⁰, a barber, to warn Mr Hytch to be very careful about this alleged relationship. Mr Hytch did not deny any relationship, rather seemed to simply ignore the unsolicited advice.
- [50]. The observations of behaviour between Robert and Rachel⁸¹ even led his sister, Mrs Colleen Lynette Aberson, to raise the issue of Robert and Rachel with her father. Robert's father, Mr Paul Hytch, acting upon the information provided by his daughter, effectively, warned⁸² Robert not to be involved with Rachel.
- [51]. There were also general observations by others that Robert Hytch and Rachel were observed parked in Robert's motor vehicle, and having a discussion, in a way described as how a couple in a relationship argue⁸³.
- [52]. In her diary, Rachel details two occasions on which she went to the Hytch home at Rose Bay, and on both these visits, she wrote, she entered Robert's room⁸⁴. Mr Robert Hytch specifically denied that Rachel had ever been to his house, and certainly not into his bedroom⁸⁵. He was contradicted on this issue by his own brother, Scott Hytch, who recalled that Rachel had watched a video in their

⁷⁸ This is merely my broad term.

⁷⁹ The source of the rumour which gave rise to Mr Robson's approach to Mr Robert Hytch can almost certainly be tracked to Mr Peter CLOUT (Exh B.042), after Mr Clout himself had been appraised by Andrew PHILLIPS (mentioned above) of the Flagstaff Hill incident. Mr Clout gave evidence to the inquest on Day 2. Mr Clout also, it appears, gave some advice to Mr Hytch about the rumoured relationship.

⁸⁰ Exhs B.191 and B.191A.

⁸¹ Mr Paul Hytch, in evidence to the Queensland Crime Commission, recalled his daughter Colleen coming to him, and "she says that I think Rachael's trying to do a line for Robert and I think Robert's falling for it type of thing": Exh C.4, ii p 14.

⁸² Whilst Mr Paul Hytch did not recall at inquest specifically issuing a warning to Robert about Rachel, he acknowledged his memory is now failing about matters such as these, but that it was the type of general warning he would give both his sons: T8-71 [7]. Direct evidence of the warning, however, comes from Mr Robert Hytch, in his conversation with the police, at the police station, on 29/04/98: "I knew that she like me alright, and you know, you know Dad had a talk to me and said you know, you know he blew it all out of proportion you know basically told me you know, if he ever caught me with her ever ever again he'd want to kill me sort of thing so I, you know I wouldn't even, I wouldn't even see her apart from you know when she rang up or I wouldn't even pick her up for training. I wouldn't even ring her you know to tell her training was off, so": Exh H.4.5, p 3. Robert's mother, Mrs Sheila Hytch, was with him at the time this statement was made.

⁸³ And this is a very generalised observation, very much of merely inconsequential weight in my mind as to establishing any relationship. McQuilty was present for the car argument.

⁸⁴ Diary note 20/07/97 (Exh F.1, "A") and diary note 21/12/97 (Exh F.1, "D"). These occasions are also mentioned in Rachel's letters to Alex Ginga: Exh F.2, "B", and Exh F.2, "J" respectively. A third occasion, later in 1997, is also mentioned in Exh J.2, "J".

⁸⁵ Exh H.5, p 67.

bedroom⁸⁶. This is not supportive as to Mr Hytch's credibility, but is, in itself, a small issue.

- [53]. I must also highlight that there are a number of factors which tend to point away from a relationship existing. Only two witnesses could ever point to anything suggestive of a direct concession being made by Robert that he was in a relationship with somebody as young as Rachel, and when he said these things to his co-employees he did not mention Rachel by name⁸⁷. No friend, nor family member of the Hytch household, ever saw Robert and Rachel together in a recognised "formal" way at a function or other gathering, and no friend of either person ever said, apart from the instances I have outlined already above, that they ever saw them together acting in a way that two people in a personal relationship would be expected to act. On the other hand, this may easily be explained if the relationship was intended to be clandestine.
- [54]. Accordingly I need to resolve whether, in the absence of a direct admission by Mr Hytch that there was a relationship, and whether the evidence supported the existence of an intimate personal relationship as suggested in Rachel's diary.
- [55]. Considering all the evidence I was presented with, and in closely observing those people who gave evidence of the nature as outlined above⁸⁸, I observed that each were solid in their evidence and no person, apart from Mr Hytch's sister, Mrs Colleen Abernson, ever appeared to overstate⁸⁹ their evidence, or waiver from what they observed being merely their observation and interpretation. I accept that each were being reliable in their evidence. None of these witnesses presented as other than giving a frank and fair account of their observations. Mrs Abernson on the other hand appeared to take every opportunity to denigrate Rachel's character, and accordingly I was unimpressed with her evidence.
- [56]. I accept, and am necessarily cautious, in that those that gave their observations are simply various ordinary members of the public, and so I need to proceed cautiously, which I have, but when I have the benefit of the diary entries, I am satisfied, indeed persuaded beyond any doubt whatsoever on the evidence⁹⁰, that there existed an intimate, personal, relationship of boyfriend and girlfriend

⁸⁶ Exh H.9, p 29. The discussion as to the video commences at the bottom of page 25. In his evidence to this inquest, Mr Scott Hytch, off the top of his head, recalled that Rachel had been to their home "maybe twice": T8-39 [15]. Both Robert Hytch and Scott Hytch (Exh H.9, p 26) confirmed that a copy of the movie "Wayne's World", mentioned in Rachel's diary and letter "B", was kept at their home, and Scott agreed that it was kept in their shared room at home: T8-39 [45]. A statement before the inquest by Mr John Haber confirmed that "S. Hytch" of 3 Lotus Lane, Bowen, booked a room for three people on 21/12/97, and stayed one night: Exh B.092.

⁸⁷ Evidence of Mr Reid, and Ms Stone, mentioned above.

⁸⁸ I leave aside Mr Robert Hytch from this consideration.

⁸⁹ Whilst each of the witnesses on the particular instances of their observations of any 'relationship' gave their evidence in a straightforward, and relatively matter-of-fact way, I formed the conclusion after listening to Mrs Abernson that she was tailoring her evidence to present Rachel in as negative a light as she could. She appeared to do this at every available opportunity given to her. It did not reflect well at all on the impartiality of the evidence she gave.

⁹⁰ This conclusion I reach irrespective of Mr Walters' concession, or more properly 'observation' that there was evidence that Mr Hytch and Rachel were in an intimate, personal relationship.

between Mr Hytch and Rachel; and that this intimate relationship extended to acts of sexual intercourse between Rachel and Mr Hytch. I do note that Mr Robert Hytch in his evidence made no unnecessary negative comments about Rachel, as did his sister Mrs Aberson

[57]. I am aware that my conclusion in this regard means that I specifically reject Mr Hytch's denial⁹¹ of there being no intimate, personal, relationship between Rachel and himself⁹².

The "sham" pregnancy

[59] There was considerable evidence before the Court that Rachel devised and executed a plan to "get back"⁹³ at Robert Hytch. The formation of this intention, and the steps taken to carry it out, are important events in the narrative surrounding this case⁹⁴, and are addressed in the following section.

[60]. The relationship between Mr Hytch and Rachel was such that it involved attempted and actual sexual intercourse. Whilst this is denied by Mr Hytch it is well detailed in Rachel's diary⁹⁵. With Rachel being so young, and immature in this regard, and very likely due to the considerable age difference of 24 years to 15 years, their relationship was being kept discreet from family and friends. It is entirely understandable that she would suffer from relationship insecurities in these circumstances.

[61]. Evidence was presented that whilst Mr Hytch attended a Surf lifesaving event in New South Wales he had a liaison with a girl from another state⁹⁶. Mr Hytch's evidence on this matter was that whilst there he met a girl in whom he became interested. I have no hesitation concluding that this liaison between the two occurred, as it was readily conceded by both persons involved. Mr Hytch agreed that he may, in general conversation, have mentioned to other lifesavers the fact that he had met this young lady at the conference⁹⁷; but he denied telling Rachel the extent of his relationship with this young lady⁹⁸. What is telling against that

⁹¹ It is certainly not a conclusion I come to lightly, or quickly, rather after very careful, prolonged and thoughtful consideration of the evidence presented at the inquest, and the conduct of each witness as they presented their evidence before me, and in this particular regard I observed Mr Hytch to be extremely uncomfortable when denying the existence of any relationship with Rachel, and it was very evident from his demeanour in the witness box, including that he was very uncomfortable at this juncture when giving his evidence, which he did not display at other times of less controversial evidence.

⁹² Even though I have not accepted Mr Hytch's evidence on this issue, that does not mean that every aspect of his evidence given at the inquest is unreliable; although it does bring into sharp focus the question of the credibility of his other evidence. In the circumstances I must consider carefully each aspect of his evidence on its merits, and weigh it against the other evidence as presented at the inquest.

⁹³ This was Rachel's expression: Exh B.241C, p 1 (Wallis); Exh B.026, p 3 (Bond).

⁹⁴ Some of this evidence was not received in the previous criminal trials.

⁹⁵ See the 'Diary Entries' annexed, where there are numerous references.

⁹⁶ Initially from South Australia, later she moved to Western Australia: Exh B.252.

⁹⁷ T9-49.

⁹⁸ T9-49.

denial, however, is that Rachel told her mother⁹⁹, and her school friends¹⁰⁰, that Robert had met a girl from interstate, and further, that Robert had told her that this other girl was now pregnant. How could Rachel know of this other than through Mr Hytch? The information could only have come to Rachel through Mr Hytch, and to this extent Mr Hytch was not being truthful in all of his evidence regarding this at the inquest. I have no difficulty in concluding that Rachel found out about this relationship through Mr Hytch. No doubt this information would be a crushing revelation to a young, ‘relationship-naïve’, 15-year-old girl¹⁰¹.

[62]. Evidence was presented that, after being told about the lady in Western Australia, Rachel then schemed, and wished to confront Mr Hytch, with the allegation that she too was pregnant. Perhaps, and I am only speculating so I do not take this issue into consideration, she thought this would then lead Mr Hytch to decide between the two girls. Whatever her precise motive was I cannot conclude, but what I can conclude is that confirmation of this scheme (and by this I mean a fake pregnancy by Rachel) was provided by her to her then school friends¹⁰².

[63]. Whilst each of these school friends were subject to extensive cross-examination I felt their evidence was very solid in what they had discussed with Rachel, and her desire to confront Mr Hytch with this allegation¹⁰³. Rachel’s desire to lend her story credibility included a plan to fake a ‘positive’ pregnancy test result. For this purpose she was able to secure some assistance from an older lady she knew¹⁰⁴, and she succeeded in obtaining a specimen of urine from a pregnant lady¹⁰⁵ under the ruse that it was for a school project. These events certainly demonstrate the degree to which Rachel could be mischievous, but her deviousness was simply borne out of her age, immaturity and naivety with respect to relationships.

⁹⁹ Exh B.009A, para [16].

¹⁰⁰ Exh B.058, para [23]; Exhs B.058B, p 2 & B.058C, p 4 (Dibben); Exh B.241, p 1; Exh B.241C, p 1-2 (Wallis); Exh B.026A, p 1 (Bond).

¹⁰¹ The young lady concerned, in a statement received in this inquest, confirmed that she did not become pregnant as a result of her meeting with Mr Hytch at the conference, and that she had never told Mr Hytch that she did: Exh B.252.

¹⁰² Exh B.058B, paras [2] and [3]; Exh B.058C, p 4 (Dibben); Exh B.026, p 1 (Bond); Exh B.241C, p 1 (Wallis).

¹⁰³ The information contained in the statements of each of the witnesses Nancy Dibben, Rebecca Bond (now Lock), and Hope Wallis, was provided reluctantly, and over a period of time. The reason for this reticence was articulated at inquest by Ms Rebecca Lock: “I do remember having a conversation with Nancy and Hope at school about whether or not we should come forward, and we chose not to because, you know, we were convinced Rachel would – would return, and we didn’t want to get her into trouble”: T3-10 [28]. This motive for the delay in providing information was confirmed by Hope Wallis: Exh B.241C, p 1.

¹⁰⁴ Ms Eileen Purchase: Exhs B.182 and B.182A.

¹⁰⁵ Rachel and her friend approached a number of persons, with some refusing as they thought the request most unusual (see Exhs B.217 and B.201.5), which it was, but eventually one lady acceded to their request, possibly because she believed the providing of a specimen of urine was fairly harmless: Exhs B.129 and 129A. I accept the witness’s evidence that the specimen of urine was provided to a girl whom she later identified from a media photograph to be Rachel.

- [64]. Rachel informed her school friends that she had performed two pregnancy tests at Robert's request. In the first test she did not follow the instructions, and the result was negative¹⁰⁶. This was said to have occurred at the toilet block at Queen's Beach¹⁰⁷. A second test was then carried out at the Bowen Pool, in which Rachel substituted the urine she had obtained from the pregnant lady in Bowen, and achieved a positive result¹⁰⁸. Evidence was also provided to the inquest, by Rachel's school friends, of Rachel's efforts to obtain some litmus paper upon which to experiment with various substances to effect the required colour change, and thus to manipulate the result of a pregnancy test kit. She also took an instruction sheet from a pregnancy kit to school on one occasion, and showed it to some of her friends¹⁰⁹.
- [65]. Rachel told her friends that she had told Robert that she was pregnant, as she had planned to do¹¹⁰.
- [66]. It was suggested that Mr Hytch travelled with Rachel to Townsville so that her pregnancy may be terminated. This was said to occur on a day, or immediately after, that bank records show that Mr Hytch withdrew \$300 from his bank account, a sizeable component of his then account balance. The inference is that this money was withdrawn for this medical procedure. Despite police enquiry there was never established any clinic attendance by Rachel in Townsville. Certainly one would think that if she had attended a doctor or clinic in Townsville at that time that the police would have obtained records of this. It certainly may be considered that the lack of records point away from there ever being such a trip, but again it might simply be that no records could then be located or that Rachel did not provide her own name. Rachel was reportedly absent from school at that time and she allegedly told friends that she was travelling to Townsville to have the fake pregnancy terminated¹¹¹. Mr Hytch denied any such event occurred. I am not persuaded that such an attendance did occur; but that does not mean that Rachel did not fake a pregnancy¹¹².

¹⁰⁶ Exh B.241C, p 3 (Wallis).

¹⁰⁷ Exh B.026A, para [9] (Bond);

¹⁰⁸ Exh B.026A, para [18] (Bond); Exh B.241C, p 3: "The Easter school holidays started just after that" (Wallis). Mr Sidney Pate, who was the proprietor of the Bowen Pool at the relevant time, advised police that he had found a small yellow-capped specimen bottle while cleaning in the ladies change rooms at the Bowen Pool (Exh B.167A). He left the bottle where he found it, expecting that someone may come back and claim it. He dated this incident as "close to the end of the swimming season which is the Easter school holidays".

¹⁰⁹ A similar instruction form was found in Rachel's room after her disappearance, concealed with her Diary Notes: Exh B.146A, p 5. See Exhs B.058C, p 4-5 & B.058D (Dibben); Exh B.241C, p 2; Ms Wallis was later presented a "line-up" of pregnancy test kits by police, and identified the one she thought was the "same brand and type" as that which Rachel had brought to school (Exh B.241E).

¹¹⁰ Exh B.026, p 2: "I know that Rachel was happy when she told Robert she was pregnant and that it was worrying him. I can't remember when Rachel told me that she had told Robert about her pregnancy. I think Rachel told Robert about her being pregnant before the Easter school holidays, as the first time I spoke to Rachel during the holidays was on the Sunday" (Bond); Exh B.241C, pp 2 – 3: "On the Tuesday after we went back to school Rachel told me that Robert was not coping with the situation very well and that one day he took her to surf lifesaving and he was rolling around on the beach holding his hands on his head saying 'I can't take this anymore' " (Wallis);

¹¹¹ Exhs B.241E & B.241F (Wallis).

¹¹² It appears that, during the last week at school, Rachel may have been getting worried about her lie to Robert: see Exh B.058C, p 6. Rachel was asked by Ms Dibben, "What are you going to do now?" She responded "I have to get the courage to tell him".

[67]. Rachel's diaries, and her school friends' evidence also document the events leading up to this weekend meeting where she was allegedly to confront Mr Hytch about the alleged pregnancy. No doubt for a single man aged 25 years old, to have a 15 year old schoolgirl pregnant would cause him significant complications, particularly as the girl who was pregnant was the very person his father had warned him to stay away from. Perhaps significantly compounding matters was that at that time Mr Hytch had 'moved on' and was in a publicly known relationship with Ms Susan Cummins. If Mr Hytch realised he had been tricked into believing that Rachel was pregnant, it could certainly create strong emotions, and could conceivably create a serious disagreement between he and Rachel. I have no doubt concluding that there existed a false pregnancy issue devised by Rachel, and that she intended to confront Mr Hytch about the alleged pregnancy of the lady from Western Australia¹¹³ that weekend.

Rachel's intentions for the evening of 25th April 1998

[68]. On the evening of Wednesday the 22nd April, Rachel, while walking home, encountered Mr Rodney TAYLOR, a local businessman. The two spoke for some time as they walked, and Rachel is said to have told Mr Taylor that she had falsely told her "boyfriend" that she was pregnant. She is reported to have said¹¹⁴:

"I am meeting my boyfriend this weekend. We [are] going to sort it out then".

[69]. This is certainly an unusual event, where a young girl encounters an older man she barely knew, and seemingly unburdens herself to him about such a personal issue. Nevertheless, the evidence is clear that Mr Taylor, having heard of Rachel's disappearance on Monday the 27th April, contacted Bowen Police that night, and provided his statement to them the following day. The dovetailing of the evidence of the conversation related by Mr Taylor into the fabric of statements made by Rachel to her friends leaves me with no doubt that the conversation did occur as reported.

[70]. Then on Thursday the 23rd April, Rachel was riding home after school with Rebecca Bond. Ms Bond told police that during that journey Rachel said¹¹⁵:

"..she was going to meet Robert on the beach [on the Saturday night] and have a talk... She told me that she was going to tell her mum she was going to the movies but she would meet Robert at the beach. She said she couldn't see him on Friday so she was going to see him on Saturday.

She told me that she had spoken to Robert on Tuesday or Wednesday and that she was upset with him and when he wanted to see her on Thursday or

¹¹³ Then living in Western Australia, initially South Australia, and who he met in New South Wales

¹¹⁴ Exh B.224, p 4.

¹¹⁵ Exh B.026, p 3; B.026A, para [21]: "Rachel told me that she was going to tell her mum that she was going to the movies and then she would walk down to Queen's Beach stinger nets to meet Robert" (Bond).

Friday, she said she couldn't and she would see him on Saturday night. I was not there when this happened but Rachel told me about the talk she had with Robert."

[71]. Further Ms Hope Wallis spoke with Rachel at school on the afternoon of Friday the 24th April, during Maths class. Ms Wallis reported that Rachel said¹¹⁶:

"I am going to call Robert and ask him to go to the movies on Saturday and I am going to ask him if he is lying about the lady in Western Australia being pregnant and if he says 'yes', I'll tell him that I am not pregnant and that it was a lie".

I accept these conversations occurred, and that Rachel intended to confront Robert about the fake pregnancy that Saturday evening.

Events of 25 April 1998

[72]. Next I need to deal with the events of 25 April 1998. That was a Saturday, but most importantly it was Anzac Day. Rachel attended Anzac Day services that morning with her air cadet corps, and participated in both the dawn service, and in the service held later that morning. She returned home, and changed from her uniform into her ordinary clothes. At about 11:00am, Rachel visited a friend's house in Powell Street, Bowen, but upon knocking upon the door, and receiving no response, she left and was last seen walking near the Post Office in the town¹¹⁷. At about 11:30am, Mrs Terry Greenoff, who had known Rachel for many years, saw her in Herbert Street, the main street of Bowen¹¹⁸.

[73]. Throughout the day the family went about their various activities. At around 12:30pm, Rachel attended the Bowen swimming pool, paid her admission fee and entered the pool area. The pool manager and lessee, Mr Sid Pate, later recalled that when she entered she was not carrying any swimming clothes or towel, and that she stayed for about a half hour. She then came back through the foyer of the pool office, and Mr Pate asked:

"What didn't anyone else turn up?"
Rachel replied "No".

She then left the pool, turning left outside the entrance door, in the direction of Herbert Street¹¹⁹. Later that day, whilst at home at about 4:00pm, Rachel asked her mother if she could attend the cinema that evening to watch a movie. Her mother gave her permission. Shortly after Mrs Antonio went to do some errands and when she did, she left Rachel at home¹²⁰.

¹¹⁶ Exh B.241C, p 4.

¹¹⁷ See Exhs B.182 & 182A, and Exh C2, p 610.

¹¹⁸ Exh B.090, and Exh C2, p 696 [53].

¹¹⁹ Exh B.167, p 2. Mr Pate was certain her hair was dry when she left.

¹²⁰ Exh B.009, paras [27] to [30].

- [74]. Other persons whose activities that afternoon were of interest, were Mr Pate and Mr Robert Hytch. Mr Pate that day was attending to his duties as the lessee and manager of the Bowen swimming pool. His evidence was that he was at the pool that afternoon until he decided to close early at around 6:30pm as he decided, apparently a spur of the moment decision, to attend the cinema that evening to watch a movie which commenced at 7:00pm¹²¹. Mr Hytch attended the Anzac Day parade, which started at about 11:00am to 11:30am, and then went home until about 1:45pm. He then went to the Greenoff residence, where he typed up a program for lifesaving on their computer. He attended a lifesaving meeting from 2:00pm to about 3:30pm, and then had lifesaving training at Rose Bay near his home. He then went home, and assisted at the family home in preparing for his brother Scott's 18th birthday party that evening¹²². Broadly there is nothing unusual in any of these activities, although certain aspects of what occurred that afternoon need closer examination.
- [75]. At around 5:00pm, three telephone calls were made to or from places of interest in this investigation¹²³. At 4:51:04pm, a call was made from the Bowen Pool in Dalrymple Street, to the Antonio residence in Gordon Street. The telephone records show a call duration of "0" seconds. This is an indication that the call was terminated by the caller before it was answered. Exactly 13 seconds later, at 4:51:17pm, a second call was made from the Bowen Pool to the Hytch residence in Lotus Lane. The duration of this call was shown by the record to have been 38 seconds. At 5:08:50pm, a call was made from the Hytch residence to the Antonio residence, and that call had a duration of 86 seconds. Mr Robert Hytch has stated that the 5:08pm call from his residence to the Antonio residence was made to remind Rachel that she was on patrol at the beach the following morning, Sunday. He has said that there was also some brief conversation about the air cadets who apparently passed out during the parade that morning.
- [76]. Whilst two phone calls being made from the Bowen swimming pool that afternoon may seem innocuous, the fact that the two phone calls were made in very close succession, and were to the Antonio household and then the Hytch household (in light of Rachel's disappearance at 7:00pm that evening, and in view of my findings that Rachel and Robert Hytch were in a personal relationship) suggest very strongly¹²⁴ that the phone calls being made were not merely a coincidence, but formed part of a web of events relevant to Rachel's disappearance. Accordingly the inquest spent quite some time attempting to establish who made these telephone calls. Logically these calls could have been made by Mr Pate, Mr Hytch, Rachel, or some member of the public.
- [77]. Mr Pate was adamant that he made no such phone calls. Mr Hytch said he was at home when he received a phone call from Mr Pate asking if Mr Hytch would come in to the pool to do last part of his shift that day, and close the pool, so that Mr Pate could go to the cinema¹²⁵. As to whether a member of the public

¹²¹ Exh B.167, pp 2-3.

¹²² Exh H.5, p 17.

¹²³ Exh J.26.

¹²⁴ In fact, in my view, the matrix of events in this matter refutes entirely mere coincidence.

¹²⁵ T9-64 [12] and following.

would have made these calls, the evidence was that the telephone was located within the kiosk at the pool, and that people would first ask to use the phone before making any phone calls. If some random member of the public had made the two phone calls it is just too extraordinary that they would ring the Antonio household and then the Hytch household. It is simply an absurd suggestion, which I reject. Elementary logic suggests that the calls were made by Mr Pate, Mr Hytch, or Rachel.

[78]. The inquest received evidence from a Mr Gordon Paul, a resident of Bowen, who was at the Bowen pool, with his young son, on the afternoon of 25th April 1998, from 3:20pm until 4:55pm. On leaving, he observed that the office manager (Mr Pate) was in his office¹²⁶. Mr Pate was questioned at inquest about these telephone calls. Mr Pate agreed that on Anzac Day afternoon, he was the only person working at the pool¹²⁷, and that when the two phone calls mentioned above were made, he was the only person in the office¹²⁸. Mr Pate denied making the calls¹²⁹. When asked if he could explain how the calls could have been made by another when he was the only person in the office at the time, Mr Pate suggested¹³⁰:

“All I can think of is that I was doing a water test or out of the office at that time.”

Implicit in Mr Pate’s answer is the suggestion that another party came into the pool entry area, without his knowledge, and made the two calls in question. However, Mr Pate, who had earlier indicated that the water tests were to be made every four hours (an industry standard¹³¹), had agreed that he would have conducted a test before he opened at 12 noon¹³², and the next one at about 4:00pm¹³³, with a final test due at “closing time or just after”¹³⁴. As to the possibility that he may have left the office for some other reason, the following exchange took place¹³⁵:

Counsel Assisting: “Apart from when you were taking the test, were you in the kiosk?”

Mr Pate: “On that day?”

Counsel: “Yes”.

Mr Pate: “I can’t recall. I would have – again could have – it’s possible I might have walked out to the pool, checked on things”.

Counsel: “Yes”.

Mr Pate: “I – I can’t recall if I did or not”.

Counsel: “You wouldn’t have moved too far from the front counter would you?”

Mr Pate: “No”.

¹²⁶ See Exh H.12, p 133, Running Sheet for 26/05/98, content confirmed by Exh B.167.5.

¹²⁷ T4-67 [30] to [32].

¹²⁸ T4-68 [45].

¹²⁹ T4-69 [6], [38].

¹³⁰ T4-69 [8].

¹³¹ T4-67 [45].

¹³² T4-68 [4].

¹³³ T4-68 [7].

¹³⁴ T4-68 [19].

¹³⁵ T4-68 [23] to [31].

Mr Pate was pressed on this issue, but maintained that he had “no idea” who made the calls¹³⁶.

Mr Pate was recalled for further examination on the Monday of the third week of evidence¹³⁷. I asked him¹³⁸:

Coroner: “Mr Pate, the phone calls made from the pool at 4:51, firstly to the Antonio household, where it’s not answered, and then to the Hytch household, did you see Rachel make those calls?”

Mr Pate: “No”.

I then asked some questions about his whereabouts at the time the calls were made. I then asked him again:

Coroner: So did you see Rachel make those calls?”

Mr Pate: “I don’t think so. No. Because...”

To me it was very clear that Mr Pate knew who made those telephone calls, and he wished to place himself the furthest distance possible from the kiosk when those calls were being made¹³⁹.

[79]. Mr Hytch’s recollection was that Mr Pate called him. While certainly sounding plausible, this does not sit at all logically with totality of the evidence I heard, and the immediately prior call being placed to the Antonio household, albeit unanswered, coupled with Mr Hytch’s unreliability in his other evidence. Mr Pate simply had no reason whatsoever to call the Antonio household. I think it is so very unlikely in fact, that I dismiss the possibility that Mr Pate made the two phone calls at 4:51 pm that afternoon.

[80]. That means that these phone calls were made by, either Rachel Antonio or Mr Robert Hytch. In view of the evidence that Rachel attended the swimming pool at around 12:30 pm that day, and seemingly waited for someone for about 30 minutes; and that Rachel only received permission from her mother to attend the cinema at about 4.00 pm it is very likely on the evidence I heard that Rachel, once she received permission to attend the cinema, simply waited for her mother to leave to run errands, before she walked the few blocks from her house to the swimming pool¹⁴⁰. When she arrived at the pool, she first dialled her own

¹³⁶ T4-70 [6].

¹³⁷ T11-57 to 67.

¹³⁸ T11-66.

¹³⁹ A somewhat surprising aspect of Mr Pate’s evidence was that although he described his activities at the pool that afternoon as simply his usual activities at the pool, and he was very vague as to precise times and events, he was able to specifically recall that at 4:51 pm he was away from the kiosk, and was in fact at the furthest end of the pool testing the water. Whilst that was an activity he was required to do at the pool regularly, it was very remarkable that in the innocuous activities at the pool that afternoon he was able to precisely recall the time he was undertaking this task.

¹⁴⁰ From 35 Gordon St, by the most direct route, namely Gordon-Sinclair Sts, to the IGA at the corner of Williams & Sinclair St is about 3 ½ blocks; from 35 Gordon St, by the most direct route via Herbert St, to the pool in Dalrymple St is about 4 ½ blocks: see Exh D1 (map of town of Bowen), and Exh J23 (map marked by Mr Robert Hytch).

residence, before terminating the unanswered call, and then rang Mr Hytch's residence and spoke to him requesting he meet her at the cinema that evening.

- [81]. Of course Mr Hytch had a prior social commitment being his brother's 18th birthday party, and so could not give an immediate response. Rachel then walked home and at 5:08 pm Mr Hytch has rung the Antonio residence, on the pretence of confirming her attendance at patrol the next day, but at that time confirmed he would meet her that evening at 7.00 pm at Queens Beach.
- [82]. Whilst Mr Hytch readily admits that he made the phone call to the Antonio residence at 5:08 PM, he said it was to confirm that Rachel was to attend for patrol the next day. I find that this is deliberately untrue, especially since Rachel was a very diligent attendee at patrols, indeed this was even agreed by Mr Hytch¹⁴¹:

Det McCusker: "When were patrols due?"
 Mr Hytch: "Uh they start at 8:30".
 Det McCusker: "What day mate?"
 Mr Hytch: "On Sunday morning".
 Det McCusker: "So it was the next day?"
 Mr Hytch: "Yes".
 Det McCusker: "And to your knowledge did she turn up for patrols?"
 Mr Hytch: "She', spot on she's".
 Det McCusker: "Yeah, okay. She always did?"
 Mr Hytch: "Yes".

Rachel did not need to be followed up nor be reminded. Mr Hytch said that he rang the Sinclair residence immediately before Rachel (which is borne out by the telephone records), to discuss the availability of their daughter Amy to cover for his sister Colleen who could not attend her rostered patrol Sunday. What is telling against Mr Hytch on this issue is that no other person rostered on for Sunday was called at all, even though he admits that Rachel was diligent in attending patrols when rostered on.¹⁴²

- [83]. Accordingly I find that it was Rachel who made these telephone calls at 4:51 pm from the Bowen swimming pool, but they are just a small component of the events which unfolded that evening¹⁴³.
- [84]. That evening at around 6 pm Mrs Antonio dropped her daughter Rachel at the cinema. She dropped her off approximately one hour before the session was to commence as her then motor vehicle had an issue with its headlights and she wished to drive only during the daylight hours. Rachel was to catch a taxi home, or obtain a lift if she saw anybody else at the cinema that evening whom she could arrange a lift with¹⁴⁴.

¹⁴¹ Exh H.2, p 17, interview between police and Mr Hytch on 28/04/98.

¹⁴² See T9-59 at [33] through to T9-62 at [33].

¹⁴³ And even Mrs Sheila Hytch at the QCC hearing 15/12/98 p 28 thought it likely Rachel made these calls

¹⁴⁴ Exh B.009, [34] to [41].

- [85]. To occupy the one hour prior to the movie commencing Rachel wandered over to the Queens Beach foreshore which is an area she was familiar as she undertook her surf lifesaving patrols at that very spot. Just after 6:00pm, she sat in a lifesaver's elevated lookout chair. Following that, until 6:45pm, she spoke at the beach with two gentleman¹⁴⁵. She stated to them, quite significantly in my view, that she was "waiting for her boyfriend". This was not a statement that either man had to draw out of her, rather she volunteered it. Of quite some significance was that she asked these two gentlemen, on a number of occasions, what the time then was. Clearly that was a pressing issue for her, and can be explained either by her wishing to attend the 7:00pm movie session, or to meet somebody at 7:00pm.
- [86]. Rachel was also observed at the entrance of a laneway near the tennis courts directly opposite the beach foreshore by two men making their way home after a visit to the bowls club. There is nothing particularly startling in this other than to confirm that Rachel was in the immediate area just before 7:00pm, near the beach where she patrolled, rather than purchasing a ticket to enter the 7:00pm session of the movie she said she was going to watch. What is clear is that Rachel never attended that movie at 7:00pm. The owner of the cinema, Mr Ben De Luca, who had owned the cinema for many years, and who knew Rachel well as she attended there regularly, confirmed that only nine persons attended that session and Rachel was definitely not one of them¹⁴⁶.
- [87]. On the evidence I conclude without hesitation that Rachel did not attend the 7:00pm session of the movie. No party suggested that she did. Rather I find that Rachel was intending to meet somebody in the Queens Beach area at about 7:00pm that evening.
- [88]. There was no evidence by any person that they saw a second party arrive in the Queens Beach area, or notice any particular incident in that area whether involving Rachel or not. Possibly why is because there was no commotion, or notable incident, rather just the ordinary coming and goings of people in the area, and at this time it was approaching dark. This area is also a little removed from the houses just nearby, and unless anyone had a particular interest in observing the activities of Rachel, her movements would be quite an innocuous event. What this highly suggests is that Rachel was not abducted against her will, because in that case she would most likely scream or call out or there would be some commotion to draw attention to the area, but if she was simply to walk away, meet somebody, or willingly hop into a motor vehicle there would be no reason for any resident's attention to be drawn to her activities¹⁴⁷. This all suggests, which I find, that there was no abduction, nor was she taken against her will.
- [89]. One person who stated to the police that they were in that area at that time was Mr Pate who was riding his bicycle. He said he wished to attend the 7 PM movie session and so closed the pool early and 'rushed' down there on his

¹⁴⁵ Mr Bulfin and Mr Walker, who were Mormon missionaries.

¹⁴⁶ Exh B.054.

¹⁴⁷ See statement of Mrs Janice Newell (Exh B.158) who lived at No 37 The Esplanade (five houses north from the tennis courts) who happened to be in her front yard at the relevant time.

bicycle, pedalling quickly. The distance from the pool to the cinema is approximately 5.5 km and very flat. Why Mr Pate would need to rush to the cinema when he claimed to have ridden this journey quite regularly, and knew how long it would take, is curious. At a moderate speed the journey would take about 15 minutes. In view of the time he said he closed the pool there is no need at all to rush to the cinema, unless he had some particular commitment to attend to in the area, or time was of particular importance.

[90]. Mr Pate said that after he arrived at the cinema he was early and quite hot, so he rode around the block to cool down. His route included the foreshore area where Rachel was last seen by others. Whilst this is a possible explanation, one could also cool down after cycling by simply stopping and resting, or simply going into the cinema and sitting down. I found Mr Pate's explanation of his movements to be very curious, as he said that he rode along the foreshore area where Rachel was last seen, but claimed he did not see her, whereas at that time a number of others did. Mr Pate specifically denied that he observed her hopping into a car, or even recognised a car of any particular person in the area. He denied having any contact with Rachel at that time. Mr Pate was a very interesting witness who displayed, from what I observed, a significant internal conflict when giving his evidence. I have the very clear impression that when Mr Pate was answering questions he was tailoring his evidence to conceal further information, and so was not being completely open and honest with the evidence he gave. I consider that Mr Pate's evidence that he rode deliberately quickly to the cinema, and then did a 'lap' of the block to cool down, but never seeing or observing Rachel whatsoever, to be very curious. I am firmly of the view that Mr Pate has further information in relation to something that he observed, or did, but is withholding that information.

[91]. Mr Pate claimed to have attended the 7pm movie session that evening and that he specifically asked Mr De Luca if he could place his bicycle inside for security whilst he watched the movie. After the movie he claims he just rode back to the pool, not detouring anywhere else, not even to obtain dinner. Mr De Luca does not recall Mr Pate purchasing a ticket¹⁴⁸, nor asking to place his bicycle inside that evening, and although Mr De Luca is of senior years, he was a very impressive witness as to the accuracy of the evidence he provided¹⁴⁹. Accordingly it was very easy for me to accept Mr De Luca's evidence that Mr Pate did not attend the cinema that evening¹⁵⁰.

[92]. What Mr Pate did from 7:00pm on that evening is unresolved, especially as a person rang him three times throughout that evening, and on the evidence, on at least one of these occasions he should have been there¹⁵¹. He says that perhaps he slept through or did not hear the telephone call. He is certainly a person of interest with respect to information which may assist in relation to Rachel's disappearance.

¹⁴⁸ Mr Pate was well known to Mr de Luca, from previous attendances at the cinema: T1-77.

¹⁴⁹ T1-74 to T1-85; Exhs B.054, B.054A and B.054B.

¹⁵⁰ Exh B.054.B, paras [7] to [9].

¹⁵¹ Exh B.144.5, para [15].

- [93]. Just before 7:00pm, is also the time that Mr Robert Hytch was leaving the 18th birthday party to go and hire a movie for the young children at the party. Before he left the house his mother asked him to buy more ice. There are a number of accounts of what time Mr Hytch left the party but I find that it is most accurate to be just a little before 7:00pm, and even Mr Hytch volunteered that this was the approximate time when first spoken to by police¹⁵².
- [94]. Mr Hytch said he then drove along the most direct route towards the video shop but that his Ford Falcon sedan broke down, unexpectedly, along Soldiers Road, a little past where his then girlfriend's parents lived, near the bend in the road at Mullers Lagoon. Mr Hytch described that his car's engine simply stopped working and so he coasted to the side of the road and pulled up. He said he was not particularly mechanically minded but lifted the bonnet and reached into the engine bay where he moved wires or leads, looking for the fuel filter, thinking this might solve the issue. After a short while he then attempted to re-start the car, it did¹⁵³, so he continued his journey. He said that when he reached into the engine bay his hands became covered with grease, and some grease transferred to his shirt as he lent under the bonnet. Accordingly he took off his T-shirt (which was a Nike branded white T-shirt) and used that to wipe his hands. He discarded the shirt into the passenger footwell of his vehicle, before continuing driving to the video store. At the video store he parked, went inside to the children's section, selected¹⁵⁴ a suitable video¹⁵⁵, which he said only took "5 minutes if that"¹⁵⁶, hired it and left. He then returned home along the same way, but as he was travelling along Horseshoe Bay Road his car again simply stopped, so he guided off the road, then again lifted the bonnet reached into the engine bay to move some cables or leads, and the engine re-started. He then continued on his way home, arriving at approximately 7:45pm¹⁵⁷. He walked in, in what appeared to others to be a slightly agitated state, and not wearing a shirt. He told people that his car had broken down, and because of that he got grease on his good white T-shirt. He only had the video and had forgotten to buy ice.
- [95]. This is the only time that Mr Hytch left alone during the duration of the party that evening but it leaves a window of some 45 minutes where his movements could not be independently verified, except for the time he was at the video store. Why these events are important to scrutinise is because this is the time immediately following Rachel's last reported sighting by the Prowse cousins.
- [96]. There are three events in Mr Hytch's journey to the video shop which require detailed examination.
- [97]. Firstly he says his car suffered a mechanical incident on his way into town along Soldiers Road. He said that his Ford Falcon sedan suffered an

¹⁵² Exh H.2, p 18.

¹⁵³ He said the car started 'straight away' on his first attempt at restarting it, see T9-11 [39].

¹⁵⁴ He said it only took '5 minutes if that', but the evidence I accept is that of the video store employee who said he took "three or four minutes at the most": Exh B.157, p 3; B.157A, p 3; Exh C.1, p 153 [21], and p 154 [7] to [20].

¹⁵⁵ Toy Story 2

¹⁵⁶ T9-12 [3].

¹⁵⁷ Mr Hytch said he glanced at a wall clock, and others also confirmed this approximate arrival time.

‘unexplained’ mechanical malfunction where the engine simply stopped (his description¹⁵⁸) and then coasted to the side of the road and parked.

- [98]. At the inquest there was some conjecture over whether his particular motor vehicle suffered the claimed mechanical incident. In the criminal investigation, the police seized the motor vehicle as part of their investigation and subjected it to a mechanical inspection. They also ran the motor vehicle for a number of hours but they could not replicate the engine failure, whether in the terms described by Mr Hytch or otherwise. Counsel for Mr Hytch said¹⁵⁹ at the inquest that this particular model engine suffered from a particular ‘gremlin’, if I can use that term, and it had been the subject of some litigation or otherwise in the United States of America¹⁶⁰.
- [99]. Evidence from Snr Sergt Gary Wright¹⁶¹, of the police Transport Section established that Mr Hytch’s car was a 1988 model Ford Fairmont¹⁶². He examined the car on the 6th May 1998, about a week after it had been seized by police¹⁶³. He agreed that, at the time of his inspection, the engine was “not particularly clean”¹⁶⁴; but that even with a relatively clean engine it was possible to get deposits of oil and dirt on one’s hands as a result of touching engine parts¹⁶⁵. Importantly, Sergt Wright confirmed that he had himself encountered electronic and electrical faults with this model of vehicle¹⁶⁶. This type of fault, he agreed, could cause the engine to fail, and a no-start situation to develop¹⁶⁷. A common problem, Sergt Wright agreed, was a failure of what was called the Hall effect sensor¹⁶⁸; he had in fact encountered six police vehicles¹⁶⁹, with the same engine and electrical system as Mr Hytch’s vehicle, in which problems had arisen¹⁷⁰. A build-up of heat would induce the fault¹⁷¹, and the effect of a fault occurring in the Hall sensor was that the motor would just cut out¹⁷². Mr Dennis Staples was a Ford-trained mechanic, with 41 years experience¹⁷³. He had over the years encountered hundreds¹⁷⁴ of vehicles with

¹⁵⁸ And I am not being critical of Mr Hytch’s less than ideal description, as he says he is not particularly mechanically minded

¹⁵⁹ T4-16 to 18.

¹⁶⁰ Mr Walters, for Mr Hytch, tendered what appears to be a printout from a website “autosafety.org” which outlines details of a class action in the USA against Ford Motor Co, relating to a long-standing defect in the TFI module fitted into a very large number of Ford vehicles. A copy of the relevant decision, *Howard v Ford Motor Co* (2000) was also tendered: both documents were received and constitute Exh J.19.

¹⁶¹ Statement Exh B.251; committal Exh C.1, pp 203-206; 1st trial Exh C.2, pp 830-839; 2nd trial

¹⁶² Exh C.2, p 832 [40].

¹⁶³ Exh C.1, p 204 [11].

¹⁶⁴ Exh C.2, p 835 [6].

¹⁶⁵ Ibid at [1].

¹⁶⁶ Ibid p 835.

¹⁶⁷ Ibid.

¹⁶⁸ Some problems with police vehicles were with the TFI unit, some were the Hall sensor, and in others the earth had to be replaced: Exh C.3, p 887 [33].

¹⁶⁹ Out of a fleet of 100 cars: Ibid p 839 [20]. The fault in question occurred in vehicles about 3 to 4 months old: ibid at [25].

¹⁷⁰ Exh C.2, p 836 [5] to [13].

¹⁷¹ Ibid, p 837 [40]; it was noticeable with police vehicles that had been on patrol for “probably two – two and a half hours”: p 839 [30].

¹⁷² Ibid, p 837 [3].

¹⁷³ Exh C.3, p 983 [34].

faults in the ignition system, and in particular the Hall sensor and the TFI module. The usual history given to him by the customer, when these faults occurred, was “they’d just say they were driving along and it cut out”¹⁷⁵. The faults were unpredictable, and could happen when “you might just drive down the local shop to get the paper”¹⁷⁶.

[100]. Mr Hytch says that in this first instance he reached under the bonnet and simply moved leads and searched for the fuel filter¹⁷⁷ thinking it might fix the problem. He did not know what the problem was but said that he had observed his father reaching under the bonnet and thought that perhaps this might work. He tried this alone even though his then girlfriend’s parents lived within sight of where he had stopped, and his then girlfriend’s father was a taxi driver, who one would think would possess some basic motor vehicle knowledge. After fiddling in the engine bay for a time, he then returned to the driver’s seat and the car simply started.

[101]. It is very interesting to examine the versions Mr Hytch has given of the time he was stopped beside the road. These were:-

a) Tape recorded Police interview, 29 April 1988¹⁷⁸ :-

MCCUSKER: How long do you think you were broken down on the side of the road all up. The first time you broke down on the way into town.

HYTCH: What ever, or just that night?

MCCUSKER: Just that night, Saturday night.

HYTCH: On the way into town it happened.

MCCUSKER: How long were you there that time, on the side of the road with the car?

HYTCH: 5, 6 minutes.

MCCUSKER: Okay, and what about when you come back?

HYTCH: About that, but a bit longer I think.

MCCUSKER: What uh?

¹⁷⁴ Ibid p 985 [32].

¹⁷⁵ Ibid at [53].

¹⁷⁶ p 986 [49] to [53].

¹⁷⁷ Unlikely he solved the issue by touching the fuel filter as my experience is that it is located in the fuel line, under the car, at the rear near to the fuel tank. It is not something readily reached from leaning in under the bonnet, but in any event the motor vehicle mechanics claimed that the car failure was an entirely different issue.

¹⁷⁸ Exh H.3, p 13.

HYTCH: 10 minutes.

b) Tape recorded Police interview, 1 May 1998¹⁷⁹ :-

INMON: How long, how long would you say you were at trying to fix your ...near Muller's Lagoon?

HYTCH: Um, 10 minutes, roughly, I wouldn't, I you know I didn't really pay much attention to the clock, around 10 minutes anyway ...

INMON: How long do you think you were on the side of the road on the second occasion?

HYTCH: Uh it was, uh slightly shorter, about 10 you know 5 or 10 minutes it was¹⁸⁰.

c) Inquest day 9, 4 September 2014¹⁸¹:

COUNS ASST: Well, how long do you think you would have been looking for the fuel filter, once you had stopped in Soldier's Road and gone around the front?

HYTCH: I don't know.

COUNS ASST: Your best estimate?

HYTCH: Anywhere between 10 and 15 minutes. I – yeah, I – yeah, anywhere between 10 and 15 say.

...

COUNS ASST: All right. Compared to the first breakdown, what would be your best estimate with respect to the time you were engaged on the second breakdown?

HYTCH: 5 minutes.

COUNS ASST: 5 minutes?

HYTCH: Yeah.

COUNS ASST: OK, so it was quite a bit shorter than the first one?

HYTCH: Yep, yeah.

d) Inquest day 11, 15 June 2015¹⁸²:

¹⁷⁹ Exh H.5, p 39.

¹⁸⁰ Exh H.5, p 42.

¹⁸¹ T9-9 [39] to [44].

CORONER: What I'd like you to do is just clarify for me the duration of the break down, because in my simple calculations, that puts you beside the road for 30 minutes. Do you think that's possible, how long you were there for?

HYTCH: I – honestly, I wasn't clock-watching. It was only an estimation of the time that I was at the side of the road on both events.

CORONER: But you think on that first trip into town you could have been broken down beside the road for 30 minutes?

HYTCH: Anything's possible. Yes. I only gave a 15 minute estimation because that's what it felt like.

- [102]. When first spoken to by the police just four days after Rachel's disappearance, he advised that he was stopped beside the road for approximately 5-6 minutes. This of course was his very first recollection to the police regarding this incident. He then gave an estimate of 10 minutes just 2 days later. In his first evidence given at the Inquest he stated the period was now 10-15 minutes, but when recalled to give evidence, he then said that 30 minutes was possible.
- [103]. What is clear is that Mr Hytch has provided four versions of the duration of his time stopped. The versions stretch from five, six minutes, to possibly 30 minutes. It is of interest to note that Mr Hytch's recollection of the time that he spent trying to restart the car increases when he is confronted with certain 'hard time points', if I may use that term, for established times of events. For example when he left the house, and when he hired the video.
- [104]. The second important aspect of this trip was when he attended the video store. He was seen to enter the store, select a video, paid for it, and left. He was described as being in the store for 3 or 4 minutes. The store's computerised system records showed that he hired the video at 7:39pm. The employee of the store described Mr Hytch's hands as clean. This is quite remarkable if he had been reaching around in a greasy car engine bay and got significant grease on his hands. He only mentioned that he used a T-shirt to wipe his hands, rather than soap and water, or another cleansing agent.
- [105]. The third important event of the journey was that Mr Hytch then drove home from the video store along the same route and on this occasion he claimed he broke down on Horseshoe Bay Road. He said in an interview with Police that the breakdown was about 10-15 minutes, later revised to just 5 minutes in his evidence at the Inquest. What is interesting about this incident was that a lady, Mrs Hansen, who resided at 59 Horseshoe Bay Road, said that she observed a motor vehicle pull into the side street, Prentice Street, opposite her house. Mr Hytch's evidence was that he pulled to the side of the road at a certain location

along this road, just 20 metres¹⁸³ from Prentice Street, where the Sailing Club then kept equipment and gear. The two locations are only 20 metres apart, along the straight section of that road which is 1.7 km¹⁸⁴ long. This resident said that because the vehicle had pulled in she got up from her chair and looked out through her front door, across the road to where the vehicle was. Whilst most people would not take much notice of such an event she was concerned because her mother lived across the road at that very spot, and her mother was away that weekend.

[106]. Clearly the incident seemed unusual to her, and it was of concern for her. She said she made a note of her observations on the Monday after hearing of Rachel's disappearance. When she wrote her observations, she included a note that the vehicle had a bullbar. She was of course observing it from across the street, the vehicle had stopped with its rear facing her, and it had driven into an area which was poorly lit by street lighting. She also made the note a few days later.

[107]. Mr Hytch's car does not have a bullbar at all but this particular model Ford does have a significant black moulded, body strip running across the front bumper bar and along the side of the car to the rear bumper. At a distance, in a dark, poorly lit, side street, a person may certainly mistake this dark coloured moulding for a bullbar. This is certainly a reasonable explanation for what an ordinary citizen not very familiar with motor vehicle models and features might think is a bullbar¹⁸⁵. What was observed was a white sedan, late-model Ford or Commodore, which incidentally is a surprisingly close match to Mr Hytch's motor vehicle. On a Saturday night at around 7:45 PM there is precious little traffic along Horseshoe Bay Road and an incidence of two motor vehicles, of similar descriptions, model year, and colour, stopping in that area is just too remarkable to have occurred twice within moments. Of interest is that Mr Hytch admits he pulled up just a very short distance, and at the same time, when Mrs Hansen observed a motor vehicle stop.

[108]. Why these events are of interest is because Mr Hytch's evidence of what occurred suffers significantly when placed under the scrutiny of the logical, and timely, sequence of events. Firstly the time he claimed he spent broken down on Soldiers Road changed from five, six minutes to possibly half an hour. This time frame expanded as Mr Hytch was given further information as to his recorded¹⁸⁶ movements that evening. What is very clear is that as he left the party a little before 7 PM, and only hired the movie at 7:39 PM, being in the store for only a few minutes, he has a period of approximately 37¹⁸⁷ to 42¹⁸⁸ minutes, which must be accounted for. The duration of travel to the store was recorded at between five to seven minutes depending on whether the police or

¹⁸³ Mr Hytch himself suggested this distance, see T9-13 at 42

¹⁸⁴ it was agreed between the then members of the bar table that the approximate distance of that section of road was 1.7 km long, and from my local knowledge this seems very much right

¹⁸⁵ but whether the car had a bull bar, or not, is not entirely determinative of whether such a vehicle turned in, when the whole of the circumstances are considered, on that quiet Saturday evening

¹⁸⁶ And by this I mean the time he left the party, and the time he hired the video

¹⁸⁷ If he left at 7:00pm

¹⁸⁸ If he left at 6:55pm

Mr Hytch's solicitors estimate is to be accepted. Using his solicitors estimate, being the greater at seven minutes, it provides a 30 minute¹⁸⁹ 'window' for the breakdown. I readily accept that Mr Hytch was not timing this breakdown and so five minutes could easily have been 10, but it is stretching things for five minutes to be 15, and certainly five minutes could not be 30 minutes. I find that Mr Hytch merely expanded the timeframe in an attempt to establish a veracity with his time estimate that his vehicle broke down. Accordingly, and in consideration of all the evidence, I do not accept at all, that Mr Hytch was being truthful in his evidence that his car suffered a mechanical breakdown on his way to the video store and his own evidence at the Inquest is very telling against him in this regard.

[109]. His second breakdown on Horseshoe Bay Road is the alleged incident as observed by the neighbour from across the road. Whilst I accept that the lady is mistaken as to the vehicle having a bullbar, as she described it, her error is readily explained by the moulded strip of Mr Hytch's motor vehicle. It simply does not stand up to scrutiny that there could be two vehicles, of nearly identical make, model, body configuration, year, and colour, stopping at that particular point along the road, at that particular time on that Saturday evening. It is so fanciful that I consider it must be rejected that there were two separate vehicles, involved in two separate incidences, rather it was Mr Hytch's vehicle that was observed by the lady across the road. Why the vehicle pulled in at this time is simply because Mr Hytch needed to establish a reason for why his simple journey to town and back took so long. Accordingly it was at this time that he dirtied his hands, shorts and shirt.

[110]. What is of particular interest is that he rents the video at 7:39 PM and arrives home at 7:45 PM, and I find that he did arrive home at 7:45pm, as he said in his evidence that after he arrived home, he spoke to people, got changed, which all took about 5 minutes before he saw the clock read 7:50pm. His further evidence attempting to lengthen this return time home was desperate, and I find an attempt to "pad out" the time. The evidence was that this journey takes between five and seven minutes. Mrs Hansen, the lady across the road, said she heard the bonnet being opened, then closed, but the vehicle was only stopped for:-

"I think a couple of minutes maybe, maybe less", and

*"You know, one minute"*¹⁹⁰.

[111]. Mr Hytch said he broke down for between five and ten minutes. Mr Hytch's story simply cannot be correct as the return journeys duration and breakdown, do not fit at all with the timeframes he gives of this leg of his journey. A stop at just a minute, as observed by the lady across the road, matches the timeframe perfectly. What is also telling, against me accepting Mr Hytch's version, is the duration of the second breakdown. There is simply insufficient time for a five minute breakdown, and if the mysterious engine fault requires the car to 'cool'

¹⁸⁹ Adopting a house departure time of 7:00pm, being the most generous view in favour of Mr Hytch

¹⁹⁰ See T7-101 [15]

before the fault rectifies, then five minutes would hardly be adequate, when it took, on Mr Hytch's version, nearly 30 minutes for the vehicle to restart on his journey into town. His claims of a mechanical breakdown on either journey are simply implausible and I find are a deliberate untruth.

[112]. Accordingly I find that Mr Hytch, is simply not credible in his evidence of his journey from the party, to the store, and return. I find that there was no 'breakdown' of his motor vehicle on either leg of his journey, rather he simply stopped on his return home so that he could add an apparent credibility to his story of a mechanical issue and apply engine grease to his hands and clothes.

[113]. Clearly this finding is very significant, as it then leaves Mr Hytch with a period of about 30 minutes¹⁹¹ unaccounted for, a window of opportunity Mr Hytch had from leaving the house until hiring the video. What is most significant is that this occurs at the same time that Rachel's last known movements are accounted for. I need to then determine if this is merely a terribly unfortunate coincidence, or if there is indeed something more sinister.

[114]. Therefore I have made two critical findings of credibility where I have found against Mr Hytch. Firstly that he and Rachel had been in an intimate personal relationship, and secondly, that on this particular evening Mr Hytch's motor vehicle did not suffer any mechanical breakdown. These are very significant findings against Mr Hytch's credibility. I appreciate very much the significance these findings of credibility hold when made against Mr Hytch's direct, sworn, evidence at the inquest. My findings on these two issues play very heavily in determining, if I can, the events which transpired that night in relation to Rachel. I state, very clearly, that I do appreciate the seriousness, and gravity, that these findings made against Mr Hytch have, not just as to his character, but in respect of other consequences which may flow. But these findings against the reliability and credibility of Mr Hytch on these two issues, are the only reasonable, and logical conclusion that I can make, particularly when I carefully observed Mr Hytch when giving his evidence. I noticed very clearly that Mr Hytch was very uncomfortable¹⁹², when answering questions on these two issues, yet was clearly more comfortable when dealing with other subjects. I carefully considered whether his difficulty, hesitation and reluctance, observed in answering these questions could have simply been due to his unfamiliarity in the witness box, or perhaps nervousness, or indeed because these were the central issues at the inquest, but my careful and considered assessment is that his answers on these issues were in fact untrue, and I consider that he was being deliberately untruthful and evasive in his evidence on these issues. I have also carefully considered any other reasonable hypothesis of these events but I exclude these. In view of these findings on credibility I need to determine why Mr Hytch was untruthful at the inquest about these matters, and also whether he is interwoven with Rachel's disappearance.

Events from 7pm (as I find)

¹⁹¹ calculated exclusively of travelling time, and video selection time

¹⁹² His demeanour, body language, even the level of perspiration all of which were not evident at other times when I noticed he was distinctly calmer and answered questions much more freely

- [115]. Bowen is not a particularly large town, and evidence was provided¹⁹³, which I accept, of the time it would take to drive at ordinary speeds from the Hytch residence, to Queens Beach, and then retake the route to the video store etc. This only accounted for an extra few minutes, which still leaves a significant period of time, approximately 25 minutes, free if Mr Hytch was involved in Rachel's disappearance.
- [116]. To my mind it is clear that in the unexplained 30 minutes that Mr Hytch had available to him, there was sufficient time for Mr Hytch to drive to Queens Beach, meet Rachel and for her to go with him in his car. This is entirely plausible as Rachel had stated to the persons on the beach that evening that she was "waiting for her boyfriend", and she asked for the time. Her simply hopping into Mr Hytch's car would not raise a moment's notice from any persons nearby, and in such a case she was not required to be coerced, nor struggle to be taken in the car. The pair then had sufficient time to drive to any nearby location.
- [117]. Evidence was given that shortly after Rachel's disappearance cadaver dogs detected¹⁹⁴ the scent of a deceased human being¹⁹⁵ at Kings Beach. The police conducted an extensive search of this area, including digging in an area of the sandhills, but nothing was located¹⁹⁶. This of course can readily be explained by the deceased person being just placed in this area, but moved elsewhere shortly after. On the evidence I draw no inference from the scant evidence.
- [118]. I also note that it is mentioned in Rachel's diary that Kings Beach, which is situated at the end of a dirt road of just a few hundred metres, is an area where she and Mr Hytch went at times to be alone.
- [119]. Rachel had advised her friends she intended to confront Mr Hytch that weekend and was to arrange to meet him at the cinema Saturday evening. I find that this was arranged in the series of telephone calls at 4:51pm and 5:18pm that afternoon. She certainly did not attend the movies, and I find that she and Robert met at Queens Beach at just after 7pm, then drove together in Robert's car to a secluded location, which may have been Kings Beach, then sat down to have their discussion. It was clear from the evidence that Robert and Rachel could engage in quite heated or animated discussions at times as this had been observed before¹⁹⁷. Simple human nature and experience suggests to me that if she was going to talk to him about the alleged pregnancy, and then admit to faking that pregnancy (as recalled by Nancy Dibben), that those circumstances, to a much older man, delivered by a mere schoolgirl, when he was then in

¹⁹³ Both police and the solicitors for Mr Hytch provided driving time estimates, which differed by only a few minutes in total.

¹⁹⁴ And it is not a science, more of a 'black art', so with nothing at all located I treat it with appropriate caution, and accord it no evidentiary weight

¹⁹⁵ Or pig remains as reportedly the dogs cannot distinguish between them

¹⁹⁶ I note in passing, but draw no conclusion, that whilst police excavated this area of Kings Beach, Mr Hytch was seen to park a car nearby and run "laps" of the beach. His evidence was that he was sand running at this time, to work on this aspect of his lifesaving which was his weakest leg. I don't draw anything out of this incident.

¹⁹⁷ See statement of Mr McQuilty Quirk, referred to above

another relationship, could well provide a very fertile ground for strong emotions to occur.

[120]. On that evening Mr Hytch was wearing a pair of reef sandals, a type of casual footwear. During the police investigations they seized a pair of reef sandals and these were tested. There was found on them droplets of blood, confirmed as belonging to Rachel. Mr Hytch's evidence to explain this was that on one unspecified occasion during their lifesaver training Rachel was injured and the blood spots were transferred to the reef sandals at that time. Whilst that is a possible explanation, another is that the blood was transferred to the reef sandals the evening Rachel disappeared.

[121]. I was very unconvinced by Mr Hytch's evidence regarding the alleged surf lifesaving incident to explain the blood, and in view of him being untruthful in other evidence, I have no difficulty in finding that his explanation for the blood on the sandals to be an invention by him and simply untrue. What was very surprising was that in his evidence at the inquest Mr Hytch was questioned about these reef sandals. It was then, for the very first time on record, that he claimed that the particular pair of sandals taken by the police were in fact his brother's, and not his. That had never been suggested at the time the sandals were seized by the police, nor mentioned in any interview he had with the police¹⁹⁸. Why Rachel's blood allegedly from the lifesaving incident would be on his brother's reef sandals is unexplained. I find that all this was merely a desperate, and very unconvincing, attempt by Mr Hytch to deflect suspicion away from himself. His evidence on this issue further damages his credibility, and reliability.

[122]. Rachel's blood being found on the reef sandals is of course significant, and my finding that this occurred on the particular evening she disappeared, means that she suffered an injury, clearly a serious, potentially fatal, injury, and this occurred in very close proximity to Mr Hytch. Mr Hytch offered no other plausible explanation as to how the blood spots came to be on these reef sandals, and in view of all the other circumstances, the only reasonable conclusion I can make, is that an altercation of a violent nature, occurred between them that evening. No doubt as the pair sat, or stood, they talked and Rachel raised the issue of the pregnancy. Perhaps her then revealing it was simply a façade, has caused Mr Hytch to become enraged. A physical altercation between the two of them has then occurred. It is not difficult at all to realise that if a physical altercation between them occurred Mr Hytch who was 6 foot, 5 inches tall, and of a physically strong, athletic build, could easily, and quickly, cause injury to the slightly (though unquestionably fit) built 5 foot 3 inch tall Rachel¹⁹⁹. It would not take much force, whether deliberate or unintended, for Rachel to be overpowered or suffer a fatal injury.

¹⁹⁸ and in the two previous Supreme Court trials where the issue of the blood on the reef sandals was raised, the only mention of it was a brief mention in the second trial by Mrs Sheila Hytch of the fact, where she said that the sandals seized by police actually belonged to Robert's brother, Scott

¹⁹⁹ one need only view the photographs of the two of them standing side-by-side to see their disparity in height and build

[123]. Accordingly I find that a meeting between the two of them occurred on that evening at a little after 7.00 PM and that shortly after that time Mr Hytch has caused a fatal injury to Rachel and thereby caused her death. Mr Hytch has then secreted her body at a location, and then likely realising he would be missed by his absence from the party, continued with his errands²⁰⁰ and driven to the video store. At this time he is shirtless as very likely he has used his T-shirt to wipe his hands or it was torn. It was evident to the employee that he was in a hurry at the store and he himself admits he has then driven straight home, forgetting the request for ice, only briefly stopping on Horseshoe Bay Road. At this stop I find that he then dirtied his hands and shorts with grease, in an attempt to give credibility to his story that his car broke down on two occasions.

[124]. He has then remained at the party all night until after everyone has left, or gone to bed, when he was discovered by Miss Anderson. She said that he appeared “really nervous” when she encountered him walking out of the bathroom at 1.00am. After ensuring all persons had fallen asleep he then slipped away from the residence, likely on foot, and crossed Sandhills creek²⁰¹, near the beach below the house, and taken the short walk to Kings Beach or nearby where Rachel’s body likely then lay. How he has then disposed of her body I am unable to determine on the evidence. Whether he has then dug a shallow grave somewhere in the Kings Beach, or the Sandhills creek area I am unable to determine, but there is also the possibility that he has swum her body out in the ocean, whether with the use of a surf lifesaving paddleboard or simply swimming, where she could then be left, possibly weighted down. This of course would be quite an easy task for an accomplished surf lifesaver. It is of persuasive significance to me, that Mr Hytch was seen by a neighbour returning home at about 7:30 AM on the morning after the party and that neighbour described how he was not wearing his usual sporting attire, his ‘lycra²⁰²’. On this occasion he was in shorts with no shirt and no shoes. Why a person who has been at a 18th birthday party and awake at 1:00 AM, would get up early to train²⁰³, without wearing appropriate clothing, before then going to do a complete day of patrolling as a lifesaver is very perplexing, I would suggest bizarre. The neighbour was not cross-examined on what she observed²⁰⁴ and persuasively there was no real response by Mr Hytch to explain the situation²⁰⁵. Ultimately I cannot determine what Mr Hytch did with Rachel’s body unless her remains are located, so I am unable to conclude further in relation as to where she may lie.

[125]. With my reaching conclusions on the evidence on the above important, contentious, factual issues it is easy to then deal with the possible scenarios that I mentioned earlier in paragraph 12.

²⁰⁰ Or more correctly, one of them

²⁰¹ It was low tide during the early am, meaning the creek is easily traversable just by walking

²⁰² Lycra being a reference to cycling bib-knicks and jersey usually worn when riding a bicycle whilst training

²⁰³ His evidence was he had been training that morning

²⁰⁴ Neither Mr Hytch’s counsel, nor solicitor, attended court that day

²⁰⁵ See T9-80 to 81, where he was unable to recall what he had done that morning. I should make clear that he was home at 7.38am when he received a telephone call from Mrs Antonio. Of course the simplest, and most routine, explanation would be something like “I woke at XX am, had breakfast at home, then Mrs Antonio called me”, but he never offered this.

1. *she chose to disappear and is discreetly living elsewhere.*

[126]. The evidence was very clear that Rachel was close to her family, even close to her pet dog, Cyruss. She was not the type of person prone to running away, in fact she had never run away from home, and is not the type of person from the evidence I heard that would simply disappear without making any contact with her family or friends whatsoever²⁰⁶. Further she has no means of living independently elsewhere.

[127]. I appreciate that a number of persons gave evidence that they saw a young girl of approximately the same age who ‘looked a lot like’, or appeared to be very similar to, Rachel. None of these persons convinced me that the person they saw was Rachel, nor did they speak to the person, rather they saw the girl at a distance. I can deal quickly with the three most significant alleged sightings of Rachel. Two were after Rachel was due to attend the cinema, one just before.

[128]. The first was by Mr Geoffrey Howie at the soccer grounds at around 8.00 PM on the evening she disappeared. Mr Howie confirmed that Rachel was in a group of girls that went past him, and he thought that the girl he saw was Rachel, but did not talk to her, nor spend any particular time focused upon her. I find this was a mistaken sighting, and matters I can point to are that there was no contact with the person to confirm that they were in fact Rachel, it was a brief sighting, he did not engage with the person in conversation or otherwise, and that when he was first spoken to by police Mr Howie did not mention this incident at all, in fact it took until 7 December 1999, quite some time later when he made a statement to the solicitors for Mr Hytch (as opposed to the police) that he mentioned that he believed he had seen Rachel at the soccer grounds. His evidence lacked credibility and whilst I do not consider that he has deliberately stated a falsehood, he is simply mistaken.

[129]. The second is Mr Francis Bugeja who saw a young girl step out of a truck near the Ayr Volunteer Marine Rescue tower. He said this girl was about 40 metres from him, described that she looked very similar to the photographs of Rachel he saw in the media shortly after her disappearance, and thought that the girl was distressed in some way before the truck driver then encouraged her to step back into the truck and they drove off. Whilst I appreciate that this witness is doing the best they can do to recall information it should be remembered that this person did not know Rachel at all, did not engage with the individual to confirm she was Rachel, and was viewing her from a distance. Perhaps the circumstances of this girl appearing distressed, and the timing of Rachel’s disappearance, made him think that it was possible that the girl he saw was Rachel Antonio. I do not accept that his evidence confirms that he saw Rachel on that date. I consider he saw a person other than Rachel Antonio²⁰⁷.

²⁰⁶ I note that Rachel paid the sum of \$55.00 on the 24th April 1998 – the day before she disappeared – for her Air Training Corps 1998 membership: see Exh B.239A.

²⁰⁷ And that this witness was called on the final day of evidence, is perhaps an example of how the inquest was conducted in a manner entirely open to possible explanations for Rachel’s disappearance to the very last.

[130]. The third relevant sighting was made by Mr Stephen Winterbottom, who at the time had a takeaway food shop at 83 Golf Links Road, Bowen. Mr Winterbottom told investigators, on Monday 27th April, that he had been working in his shop from about 6:15pm to 7:00pm on Saturday evening²⁰⁸. He saw three girls come into his shop, where they bought some takeaway food and lollies. They then sat outside the front of the shop while they ate their purchases. The “first girl” Mr Winterbottom described as being about 15 to 16 years of age²⁰⁹, 5’ 3” in height, with long dark hair, hanging loose²¹⁰, and wearing a blue top with, he thought, some white in it. Mr Winterbottom recalled that he had seen this young girl in the shop on perhaps a half-dozen occasions over the preceding 3 months, invariably on a weekend²¹¹. He was shown a photograph of Rachel at the time he gave his statement, and he stated, in respect of the photograph, that “this was the person who was in the shop on Saturday the 25th of April 1998”. At the second trial, Mr Winterbottom was able to isolate the time the three young girls came into his shop as “round about the 6 o’clock mark from recollection”²¹². Mr Winterbottom again opined, towards the conclusion of his evidence, that the girl in the photograph was the same person who came into his shop: “Yeah, in my opinion I feel it’s the same person, yes”²¹³.

[131]. From about 5.45pm on Saturday 25th April, the police investigators were able to piece together the final 60 or so minutes preceding Rachel’s disappearance²¹⁴. This account was taken from three people who were at the time swimming in the stinger-netted enclosure at Queen’s Beach, from about 5:45pm to 6:05 or 6:10pm²¹⁵; from two Mormon missionaries who were at the beach from about 6:00pm until approximately 7:00pm²¹⁶; from two young men who were sitting, for a time, near the two missionaries²¹⁷; and from an eighth person who at about 5:30pm (the witness’s estimate) “just starting to get dark”, walked down to the top of the beach and saw three people swimming in the enclosure, and a young girl sitting on the lifesaver’s raised lookout chair²¹⁸. The witness turned and

²⁰⁸ Exh B.249.

²⁰⁹ Exh C3, p 632 [47]; evidence at pp 631-638 (second trial). Mr Winterbottom was not called at committal proceedings, nor at the first trial.

²¹⁰ Exh C3, p 632 [35].

²¹¹ Exh C3, p 633 [51]. He did not see her again, and ceased business at the store in December 1998: Exh C.3, p 634 [34].

²¹² Exh C3, p 631 [35].

²¹³ Exh C3, p 638 [1].

²¹⁴ Reference should be made to Exh E.2 (depicting the top worn by Rachel at the time of her disappearance); Exhs E.5.1 and E.5.2 (showing Queen’s Beach, with the tennis courts, pathway to the beach, and reel for the stinger net); and Exh E.14 (two photographs aerial views of Queen’s Beach showing stinger net *in situ*, tennis courts, easement beside tennis courts, pathway to beach, top of Summer Garden cinema). The location of Mr Winterbottom’s shop, at 83 Golf Links Rd, is out-of-picture to the left of the roundabout shown one-third of the way down the left-hand-side of the second photograph in Exh E.14. By reference to the plan marked by Mr Hytch during his evidence (Exh J.23), the Winterbottom shop is to the south-east of the letter “M” (Motel) at the intersection of Golf Links Rd and Mount Nutt Rd.

²¹⁵ Ms Robynne Mayol (Exh B.144), Ms Keren Eamer (Exh B.062) and Mr Guy Rutherford (Exh B.197).

²¹⁶ Mr Scott Bulfin (Exhs B.032 & B.032A) and Mr Clinton Walker (Exhs B.240 & 240A).

²¹⁷ Mr Jamie Anderson (Exh B.007) and Mr Thomas Hamilton (Exh B.095).

²¹⁸ Mr Leonard Schulze (Exh B.202).

commenced walking back to his car, and, as he did so, he saw two young males, whom he “took to be Mormons”, exit a vehicle in the parking area, and walk down towards the beach.

[132]. Without repeating all of the relevant facts contained in their evidence, the witnesses have had a young girl within their sight from the time she has entered upon the beach area itself (evidence of Mr Rutherford), until she has taken a seat on the elevated lifesaver’s observation chair on the beach. She has still been sitting there when the three swimmers have completed their swim, at 6:00pm²¹⁹, and have walked up from the beach. At the top of the stairs they have encountered the two Mormon missionaries, who were on their way down. At the top of the beach, the missionaries sat on a bench which overlooked the stinger net area. The bench was about five feet from the lifesaver’s observation chair²²⁰. In due course, the young girl on the chair climbed down from the chair, and walked towards the missionaries. When she became closer to them, they initiated conversation with her, and she remained in their company until she left, and walked back up the path towards the Esplanade at about 6:45pm²²¹. In the course of conversation with them, the young girl advised the missionaries that her name was Rachel²²², that she was 16²²³, that she was a lifesaver²²⁴, that she worked at the beach on Sundays²²⁵, that she had a boyfriend, or ex-boyfriend²²⁶, who was 24 years of age²²⁷, that he lived at Rose Bay²²⁸, and that she was waiting for him, and that they were going to the pictures²²⁹. Taking all this evidence together, I have no difficulty whatsoever in finding that the young girl who had taken her seat on the lifesaver’s chair was Rachel, and that she was on the beach from about 6:00pm until 6:45pm, at which time she left the beach and walked up in the direction of the Esplanade²³⁰.

[133]. At a few minutes before 7:00pm, cousins James Prowse²³¹ (48 years) and Charlie Prowse²³² (67 years) left the Bowls Club on the Esplanade at Queen’s Beach, and walked north along the footpath, and came to the same tennis courts on their left²³³. As they neared the northern corner of the tennis courts, they noticed a young girl standing at the corner of the tennis courts, looking back up

²¹⁹ Mr Rutherford, Exh B.197, para [7]. Notably, Mr Rutherford provides the most accurate description of Rachel’s clothing in his statement: para [5].

²²⁰ Walker, Exh B.240, para [7].

²²¹ Walker, Exh B.240, paras [10] to [23]; Bulfin Exh B.032, p 1, 3rd para, through to p 4. The missionaries remained on the beach until 7:00pm, at which time they returned to their vehicle. There is no suggestion that they saw Rachel at any time in the course of leaving the area.

²²² Bulfin, Exh B.032, p 2, 3rd para.

²²³ Bulfin, Exh B.032, p 2, 3rd para; Walker, Exh B.240, para [16].

²²⁴ Bulfin, B.032, p 2, 3rd para; Walker, Exh B.240, para [11].

²²⁵ Bulfin, Exh B.032, p 3, 1st para; Walker, Exh B.240, para [23].

²²⁶ Bulfin, Exh B.032, p 2, 3rd para; Walker, Exh B.240, para [13].

²²⁷ *Ibid* Bulfin; Walker, Exh B.240, para [13].

²²⁸ Bulfin, Exh B.032A; Walker, Exh B.240A, para [4].

²²⁹ Bulfin, B.032, p 2, 3rd para; Walker, Exh B.240, para [13].

²³⁰ Bulfin, B.032, p 4, 2nd para; Walker, Exh B.240A, para [8].

²³¹ Exh B.180.

²³² Exh B.179.

²³³ Exh E.5.3, shows an aerial view of this section of the Esplanade, and shows the Bowls Club (marked “BC”), the tennis courts, and an easement or lane which runs between the tennis courts and the first house past the tennis courts. The Prowse cousins were on their way to James’ home at No 27, the *second* house past the easement.

the laneway beside her (towards Murroona St)²³⁴. Mr James Prowse thought that they may have startled the young girl, as she immediately walked away from the corner of the tennis courts, onto the road, and started walking briskly south, towards the carpark opposite the stinger nets. A short conversation took place²³⁵:

James Prowse: “What are you up to? Are you OK?”

Young girl: “Yes”.

Charlie Prowse: “G’day, how are ya?”

Young girl: [mumbled response].

[134]. At closest, Mr James Prowse estimated he was about 4 feet away from her²³⁶. The Prowse boys continued to walk north, and James turned to see where the young girl had gone:

[135]. “She appeared to walk down the road towards the car park opposite the stinger net. She still appeared to be walking briskly.”²³⁷

[136]. The Prowse boys arrived home at 7 o’clock²³⁸.

[137]. Having regard to these various observations, and identifications of the young girl as Rachel, by reference to photographs presented to the witnesses by police, the window of opportunity available for Rachel to (i) leave the vicinity of the stinger net, and (ii) meet with two other young girls, then (iii) walk south/south-east to No 83 Golf Links Road (the location of Mr Winterbottom’s shop), (iv) buy (and wait for) takeaway food and lollies, (v) sit outside the shop while the foodstuffs were consumed, and (vi) walk back to the tennis courts, where she was first seen by the Prowse boys, was at most 12 minutes. In view of her conduct as clearly observed by the Queen’s Beach witnesses, and her expressed statements of intention to the missionaries that evening, and to her school friends in the preceding days, I believe Mr Winterbottom was mistaken in his identification²³⁹, and that the circumstances are consistent with Rachel having walked away from the missionaries, up and onto the Esplanade, and then walking across the road to the corner of the tennis courts and the laneway or easement connecting the Esplanade to Murroona Street, where she waited for about 10 minutes. The description of her as “walking briskly” south towards the stinger net carpark is consistent with her either changing her position on account of the Prowse boys’ approach, or of her walking south to meet some person, possibly in the car park. It defies logic that Rachel would be repeatedly asking

²³⁴ Exh C.1. p 82 [7].

²³⁵ Exh B.180, para [4].

²³⁶ *Ibid.*

²³⁷ *Ibid.* Mr James Prowse, at the first trial (see Exh C.2, pp 511-512), marked on a photograph a small red “x” indicating where the girl was when he first saw her, a red circle indicating where she was when he turned to look back at her, a blue (biro) cross showing his position when he looked back at the girl, and a straight blue line showing the path taken by his cousin and himself as they walked north from the Bowls Club. This same photograph, with Mr Prowse’s markings, is Exh E.5.3 in this inquest.

²³⁸ A time well remembered by Mr Charlie Prowse, because “when we got home, the wife said ‘you’re early, it’s only 7 o’clock’ ”: Exh C.1, p 80 [46].

²³⁹ If Mr Winterbottom, in his evidence at the second trial was correct, his timing of the arrival of the three girls at his shop, at “round about the 6 o’clock mark”, is in direct conflict with the firm sightings of Rachel sitting on the lifeguard’s chair on the beach.

the missionaries the time, and then, at 6:45pm, decide she would meet some friends and go to the shop for food and sweets.

2. *she chose to disappear and is being actively hidden by others*

[138]. Again I restate that I do not accept that Rachel was the type of girl who would simply choose to disappear. I rely on the findings of fact I have made above in regard to rejecting the notion that she chose to disappear, and there was certainly no evidence whatsoever that she is being actively hidden by others, which circumstances have occurred in Queensland previously²⁴⁰.

3. *she went off on an innocent adventure of her own and has died a natural death, for example a cardiac event, yet her body has not been located*

[139]. Whilst it was a possibility that Rachel had simply gone off on ‘an innocent adventure’ of her own, such as a late night swim at the beach she regularly patrolled as a lifesaver, there was no evidence that Rachel has done this. If it had occurred, you may expect that her clothes and shoes would be found on the beach, or she would have taken with her appropriate attire for swimming, which she did not²⁴¹. Additionally Queens Beach is a north facing beach which has a very shallow and gradual depth for an extensive distance from the shoreline, and there are no particular currents or underwater features likely to trouble a capable swimmer²⁴² such as Rachel. In fact the eastern end of the bay is considered a calm and safe overnight anchorage regularly utilised by sailors and commercial trawlers in appropriate conditions. In addition there is a public boat ramp located there, perhaps some indication of how calm and protected that bay is since it faces north, protected from the prevailing south-easterly winds²⁴³.

[140]. The evidence was that Rachel was very fit, and I find fitter than many her age through her sporting activities, and then training competitively for surf lifesaving. There was no evidence that she suffered from any particular medical conditions, and apart from a sibling who died shortly after birth, Rachel’s parents and her other siblings all enjoy good health. There was not demonstrated, nor even suggested, any particular familial health issue which may have affected her.

[141]. Accordingly I dismiss this possibility for her disappearance.

²⁴⁰ And I speak of the case involving Ms Natasha Ryan, who lived discreetly for a number of years, despite police enquiries, with her boyfriend in Rockhampton.

²⁴¹ Rachel’s mother confirmed that she simply wore a singlet top, skirt and shoes (and forgive me that I do not describe the style of her footwear in detail, as I am not an avid devotee of women’s fashion) to the theatre, she did not take additional clothes in a bag or backpack

²⁴² It must be remembered she was an active surf lifesaver, training for ever-increasing and demanding life-saving qualifications. It goes without saying that being a competent swimmer is an essential quality. See the evidence of Mrs Greenoff at T2-51 to 52.

²⁴³ This beach and bay is exposed to northerly winds, usually experienced in the months of October and November in the tropics and also cyclones through the cyclone season of 1 November to 30 April. None of those climatic circumstances prevailed on 25 April 1998.

4. she went off on an innocent adventure of her own and met with an accidental death of her own doing, for example drowning, yet her body has not been recovered

[142]. I simply repeat what I said above about whether she went off on an innocent adventure of her own, which I do not find she did. Again I can simply state that there was no evidence to suggest that she may have met an accidental death, and certainly with her competency at swimming she would not meet with a situation such as an accidental drowning at Queens Beach that night, or any other beach in the area for that matter, as conditions were benign. Accordingly I reject this hypothesis.

5. she went off on an innocent adventure of her own and died, yet her death has been concealed

[143]. Somewhat repetitively I confirm that I do not accept that her nature was to engage in an innocent adventure of her own. There is certainly no evidence presented at the inquest, and accordingly I find, that she has not been involved in any such activity and her death secreted.

6. she has met with an unfortunate accident in which another has caused her death, for example a motor vehicle accident in which she was a pedestrian, which incident is unreported

[144]. The police were able to confirm that there was no record that Rachel has been involved in any motor vehicle accident, or any other incident of an accidental nature. Bowen is a small community and an incident such as this, where a pedestrian was hit by a motor vehicle, would be very difficult to hide. Accordingly it is very easy to dismiss this, on the evidence I heard, as a possibility for Rachel's disappearance.

7. she committed suicide

[145]. As I stated above Rachel was a much loved daughter and sister. Significantly she, quite unlike most grade 11 students, then held a defined career plan for her future following completion of her schooling. This plan she was already actioning. She wished to enter the Air Force, and was already engaged in Air Cadets, including scheduling to attend certain Air Cadets' activities, which had been paid for just before her disappearance. There is no evidence before me that in any way Rachel was troubled in such a way that she might consider taking her own life. Accordingly I have no difficulty in dismissing suicide as a possibility to explain Rachel's disappearance.

8. *she has died at the hands of another person*

[146]. This could conceivably deal with any type of killing, including the causing of a death unintentionally, by act or omission. I have set out earlier in my findings my reasons why that I find that she died at the hands of Mr Robert Paul Hytch.

[147]. Accordingly, the findings I make are as follows ;-

- A. in accordance with s.45(1) of the *Coroners Act*, as I am investigating suspected death, that the death of Rachel Joy Antonio did happen²⁴⁴.
- B. In accordance with s.45(2) of the *Coroners Act*, I find that:-
 - a. who the deceased person is - Rachel Joy Antonio;
 - b. how the person died - she died following a physical altercation between her and Robert Paul Hytch, which altercation caused bodily injury to Rachel, and she died from the injury or injuries suffered during that altercation²⁴⁵;
 - c. When the person died - 25 April 1998;
 - d. where the person died - Bowen²⁴⁶, Queensland; and
 - e. what caused the person to die - I am unable to determine the precise medical cause of death.

[148]. In stating the above I do not make any statement, nor can it be inferred, that Mr Robert Hytch is guilty of an offence or civilly liable for something²⁴⁷, as these are inquest findings that I make, and this is not a criminal trial, nor a civil action²⁴⁸.

Recommendations

[149]. The second task I must perform is comment on anything that may relate to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future. In the particular circumstances of this matter there are no such recommendations that I make.

²⁴⁴ and it was common ground from all the parties at the inquest that Rachel is deceased

²⁴⁵ I specifically considered, and reject, an “open” finding of how she died

²⁴⁶ On the evidence I am unable to conclude precisely where in Bowen Rachel died

²⁴⁷ See s.46(3) *Coroners Act 2003*

²⁴⁸ Some who may consider that an inquest finding such as this is “contrary” to a ‘not guilty’ verdict of a criminal trial of the ‘same’ circumstances (and as I stated earlier an inquest is able to receive far greater evidence than is permitted to be received in a criminal trial) would be well advised to read the paper by Mr John Aberdeen, Counsel Assisting at this inquest, and published in (2016) 23 (3) *Jnl Law & Medicine* 595. In that paper he succinctly states the law on this issue. To paraphrase from that paper he concluded that “... the current state of Queensland law contains no impediment to findings of fact at inquest which may be interpreted as contradictory of the result of earlier criminal proceedings resulting in acquittal”.

Offences or Misconduct

- [150]. I am required to report offences or misconduct. There is no allegation of misconduct. An offence is a separate question.
- [151]. At the inquest Mr Robert Hytch declined to give evidence as he said that his evidence might tend to incriminate him. He is perfectly entitled to take this election. Accordingly I gave him two directions compelling him to give evidence²⁴⁹, which meant his evidence attracted the protection of s.39 of the *Coroners Act*. Therefor his evidence, after those directions, cannot be used against him in any criminal proceedings except in relation to a charge of perjury.
- [152]. Received into evidence in this inquest were a Rachel's diary notes²⁵⁰, and a series of letters to Ms Alex Ginga²⁵¹, written by Rachel, principally during 1997 and 1998. These diary notes and letters, it seems likely, would be admissible in a civil proceeding²⁵², however, they would *not* be able to be received in a criminal proceeding unless the proceeding related to a charge under Chapters 28 to 32²⁵³ of the *Criminal Code*.
- [153]. For the reasons I have previously set out, I have found that an intimate relationship existed between Rachel and Mr Robert Hytch for some time during 1997 and 1998. In his evidence before this inquest, Mr Hytch denied the existence of any such relationship. Based upon the whole of the evidence placed before this inquest, particularly the observations made at various times during the relevant period, by people who knew both Rachel and Mr Hytch, taken together with Rachel's representations made in her diary notes, and in her letters, together with the other evidence I accepted, set out earlier, I have no doubt that such a relationship did then exist.
- [154]. The result is that I believe that Mr Hytch, in denying the nature of this relationship before this inquest, made statements which were deliberately false. While there is certainly evidence from witnesses, including Ms Ginga, to possibly prove, beyond a reasonable doubt, that such a relationship did exist, it

²⁴⁹ Mr Hytch gave evidence on Day 9 of the inquest, and was recalled to give further evidence on Day 11 of the inquest.

²⁵⁰ Exhs F.1 and F.1A (original diary notes)

²⁵¹ Exh F.2; retrieved from Ms Ginga by investigators. Both these classes of documents have not previously been received in any legal proceeding arising from Rachel's disappearance.

²⁵² See section 92, *Evidence Act 1977*.

²⁵³ Section 93B, *Evidence Act 1977*. This section was inserted into the Act by the *Criminal Law Amendment Act 2000*, and commenced operation on 27 October 2000. It amended the *Evidence Act* in accordance with the recommendations of the Task Force on Women and the Criminal Code: *R v McGrane* [2002] QCA 173, at [44] *per* McMurdo P. It was to apply only to specified offences against the person.

is the fact that the limited application of section 93B²⁵⁴ of the *Evidence Act 1977* would not extend to enable a criminal court to accept into evidence the diary notes and letters.

[155]. For the above reasons I shall refer the evidence of Mr Robert Hytch, in respect of his denials of his relationship with Rachel, to the Director of Public Prosecutions for further investigation into the possible commission of an offence of perjury by Mr Hytch at this inquest. It may be that no prosecution is able to be brought due to the insufficiency of tenderable evidence in a criminal court. The Antonio family need to be aware of this.

[156]. Accordingly, and without drawing any adverse conclusions, I shall refer Mr Hytch's evidence to the Director of Public Prosecutions to investigate a charge of perjury.

[157]. Whether there is 'fresh and compelling new evidence' for any other charges to be preferred against Mr Hytch on other aspects of the circumstances is a matter for the Queensland Police Service to consider, but I note that Rachel's diary and its' contents were very well known to the police from early in their investigation, and Mr Hytch provided his evidence at the inquest under compulsion.

[158]. Whilst I have stated earlier that I consider that Mr Sidney Pate was withholding certain evidence, there appears to me to be insufficient available evidence to warrant any charges against him, at this time, although if further information comes to light a referral for possible criminal charges remains a distinct possibility.

Magistrate O'Connell
Central Coroner
Coroners Court of Queensland
Delivered at Bowen, Qld
28 July 2016

Diary Entries

(I have not corrected grammatical or spelling errors)

²⁵⁴ Offences against the administration of justice, including perjury, are contained in Chapter 16 of the *Criminal Code*, which is not included within the range of offences which enliven the operation of section 93B.

Robert Hytch (24²⁵⁵) came back from England in March²⁵⁶. In mid-April we were talking on the rocks and he told me he liked me “more than a friend”.

18.05.97:

Robert and I went for a walk together over the rocks and ended up in the middle of nowhere. But, we sat down and talked. He touched my breasts and bottom and told me a lot of things. We were away for 1 ½ hours. Rob and I saw each other every Sunday down the beach. We got on really good. Everyone else is always around.

20.07.97:

He come to pick me up for the S.L.S training. No one turned up. So, we went back to his place. His family was away for the weekend. We watched Wayne’s World (in his room)²⁵⁷. Let’s just say I ended up naked on the floor – and so did he. We tried – but we couldn’t. It hurt a bit (and I was a real wuss!) We still didn’t kiss.

29.07.97:

We broke up. He thought I mustn’t have liked him if we didn’t kiss. He also thought I told all my friends.

03.09.97:

He told me after S.L.S. theory training that he realised he had made a big mistake and that he wanted us to try again. We hugged and I agreed (Flagstaff Hill)²⁵⁸.

10.09.97:

We went up to Flagstaff Hill after S.L.S. training and spent 1 hour up there together. We both had a good night. I had no top on and neither did he. We kissed. He guided

²⁵⁵ Robert Paul HYTCH born 22/12/1972.

²⁵⁶ Robert HYTCH confirms he returned to Bowen in March 1997: Exh No: H.5, p 12.

²⁵⁷ Robert HYTCH owned a copy of the movie “*Wayne’s World*”: Exh No: H.5, p 67. In an interview with the police on 01/10/98 (Exh No: H.9) Scott HYTCH states that Rachel knew the “*Wayne’s World*” video was in “their” (Scott’s and Robert’s) bedroom: p 26. Scott also concedes that Rachel has “probably” watched a video in the bedroom: p 29. Robert denies Rachel had ever been in his room: Exh No: H.5, p 67.

²⁵⁸ A trip to Flagstaff Hill (for which the date or approximate date is not provided) is confirmed by Andrew Robert PHILLIPS: Exh No: B.171 and B.171B, and confirmed in evidence at the inquest.

my handed to his “fiddly bits” and I took things from there. We didn’t even try to have sex. I think he “came”.

21.09.97:

The Fishing Classic was on this weekend. There was a huge party down at the Front Beach all night. We went for a walk at 12.05 a.m. He’s family went home at 12:25 – he stayed with me and one of the older S.L.S. members said he would take him home later on²⁵⁹.

At about 1.00 a.m. we went for a walk and ended up laying on the beach together. We tied – but it hurt too much. I was so embarrassed, I cried after he stood up. At 1:35 we left the beach. I got home at 1:45 a.m.

22.09.97:

He was really quiet. It pissed me off. We had a fight.

28.09.97:

I went to Townsville for the week → I missed him like hell.

08.10.97:

We had S.L.S training. Robert took the other 2 guys home at 7.30. We went to Murray’s Bay till 9:10. We tried again. I was scared it would hurt again.

12.10.97:

Had an argument. He deliberately tries to make me mad. I told him to meet me at the beach the next day. He didn’t turn up. On the way home, I saw his car at this girl’s (he drives to work) house. I cried all the way home. I rang him when I got home. He promised he would turn up at the beach the next day.

14.10.97:

²⁵⁹ The fact of the Fishing Classic is confirmed by Phillip KATEIFIDES, Exh No: B.120, who also confirmed that he saw both Rachel, and Robert, at the event; that at about 1:30am, the two approached him, appearing to follow each other, and requested a lift home, which he provided: page 3.

He came down and told me he thinks we should just be friends. I cried my eyes out. I was so upset. He said we could still do things together, so, we agreed to go to the movies on Saturday night.

18.10.97:

We turned up at the movies – but I told him I wanted to go for a walk down to Queens Beach. We walked for about 500 metres then sat down and talked. We ended up naked on the sand. We tried and it didn't really hurt – but it still didn't happen. He didn't leave until 10:15 p.m.

26.10.97:

He told me he wanted us to be “more than friends” again. We went for a walk and hugged.

4.11.97:

Over the last 6 months I think I've grown up so much. I see things a lot differently to how I used to!

The biggest issue in my life right now is whether to do it – or not. Robert and I have been best friends for over 2 years and have been going out for about 6 months. I really care about him and like him so much. I can honestly say – I think I love him. He's been there for me through bad times and I've told him things I haven't told anyone else before.

We have tried to about 4 or 5 times but it just hasn't happened. I think I'm ready. A lot of girls lose their virginity early but I wanted to wait until I definitely know when the time is right. I am a little bit worried about it hurting but I don't want to regret it afterwards. I guess, virginity isn't a real big issue to me anymore – you have to lose it one day. I know unless Robert and I break up within the next 2 weeks, it will happen.

Although, Robert is 24 (almost 25) he is really caring. The only problem I have – is that I'm scared he will dump me afterwards. This shouldn't really worry me cause he has been with me for 6 months already. I know he cares about me. I don't want to make the biggest mistake of my life. I really think I love him. I think it's just a risk I will have to take – and I will.

05.11.97:

Broke up for a few days – are going out again. (2 weeks later). He said he would go for a drive after swimming training. Then we didn't go. He went home.

↓

Things are okay. Could be better although.

2 weeks before Xmas he qualified as a lifeguard and works in Mackay 4 days a week²⁶⁰. He has a new car → a ford fairmont²⁶¹.

08.12.97:

He came around to my house (Mum wasn't home). We went down to Kings Beach. We went for a walk through the scrub, layed down and I kissed his ----- (a little bit). He kissed my bottom. We tried 3 times but it hurt.

07.12.97:

He kissed my "girlie bits" under water. I was really shocked caused I never thought he would do anything like that. I liked it (sort of) but it wasn't really the right time or place (at Queens Beach).

21.12.97:

Robert turns 25 tomorrow²⁶². He leaves to go to Mackay at 6 am on Monday morning²⁶³ and gets back on Thursday or Friday. We went to his place. His family was all in Mackay²⁶⁴. I was sandy. We went for a shower together then he carried me into his room. He showed me how adventurous he could be – and I showed him how adventurous I could be. I performed "oral sex" on him which was totally different from what I expected. It was okay, I suppose. But, he just layed there. He rubbed my neck. I started and stopped all the time. He got really frustrated, and I wasn't going to keep going if he wasn't going to cooperate. We were there for 2 ½ hrs. I said "you don't even do anything", and he said, "I've had enough – you're too domineering. I got up and got my clothes back on. I went back into his room and he said – you were just way TOO BOSSY. I had kept telling him ~~wher~~ were to lay (about so).

We hugged and he drove me home. I was really angry ~~and~~ at him for no doing anything. I was also really guilty all week.

²⁶⁰ Paul William BARKER, Exh No: B.018, states that Robert HYTCH worked the following periods as a lifeguard in Mackay, at Lamberts Beach, in 1997: 15/12/97 to 17/12/97 (3 days); 22/12/97 to 25/12/97 (4 days); 29/12/97 to 31/12/97 (3 days). Lamberts Beach is a beachside suburb of Mackay.

²⁶¹ Robert HYTCH purchased a Ford EA sedan on 04/12/97: Exh No: J.35 – Contract of Sale. This diary note may well be simply mis-dated as to the month, and perhaps should read 5/12/97, which would be after Robert acquired the Ford sedan.

²⁶² Robert Paul HYTCH is born 22/12/72.

²⁶³ Robert HYTCH worked at Mackay from 22/12/97 to 25/12/97: Exh No: B.018.

²⁶⁴ John Kevin HABER, caravan park proprietor, states that "S. Hytch" booked three adults into the Central Caravan Park, Mackay, for one night, on 21/12/97: Exh No: B.092.

28.12.97 → 04.01.97²⁶⁵ :

I was in Townsville²⁶⁶.

05.01.97²⁶⁷:

I saw him on Sunday at Queens Beach. He said hello but seemed disinterested. Two 13 year old girls came down. He went swimming with them. (He fairly checked them out – but I know he would dare to do anything with them – they’re only [...])

In Townsville – I realised a lot of things. Everytime we have an argument – I get really upset. I constantly worry about what he’s doing and who he’s with. I just want things to work out between us.

In Townsville I was physically sick with worry and I realized that the next 2 yrs of my life are so important (Yrs 11 & 12) so I can’t have any problems/distractions. I know he will find another girlfriend soon → and I will be tossed away. That would really hurt me badly. So, I thought, it would be best if we were just friends. I told him and I have no idea how he took it.

He didn’t talk to me for the rest of the day. I don’t know if he was angry or upset. But, I think it was a bit of a shock for him. I told him he could come around and see me on Friday if he wanted to. I told him I still want us to be really good friends and he said, Yer, okay.

Over the last 2 months I’ve been wondering if he was using me – cause he only wanted me around when he wanted “some fun”. I guess I will find out now. I know it’s going to be hard to get over him since we had been going out for 8 months.

I will just have to be strong enough. He really changed since he’s become a lifeguard – he has no respect for me anymore. He tells me to meet him places – and doesn’t turn up. I’ve had enough.

25.01.98:

²⁶⁵ Clearly it should read 1998.

²⁶⁶ Confirmed by Roger Noel ACFORD, Exh No: B.002A.

²⁶⁷ Clearly it should read 1998.

Robert Hytch - 22/12/72. Rachel Antonio - 20/03/82, Note Pad, 25/01/98, 5.40pm, SLS, Drove me home, went for a drive down Kings Beach Road, followed a dirt track, stopped car, in back seat of car white ford fairmont (new one), didn't even know that it had happened, we had tried many times before but things just didn't work, it hurt too much, today it hurt and we stopped, I looked down and I was bleeding. It's now one and a half since it happened and I am so sore.

25.01.98:

Well, today I lost my virginity. At the moment I am feeling extremely emotional. I'm not sure if I regret what happened. I'm really worried that our r'ship will be over. I'm upset cause I am only 15 (I will be 16 in 7 weeks). The funny thing is I [...]