

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 0860 / 2007

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: LYNETTE MAY PHILLIPS

Delivered On:	10 December 2012
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street, Melbourne, Vic, 3000
Hearing Dates:	19, 20, 21 and 22 September 2011
Findings of:	Judge Jennifer Coate
Representation:	Vanessa Nicholson, Avant Law, for Dr Michael Kozminsky
Police Coronial Support Unit	Sergeant Tracy Weir and LSC Kennedy
Family	In person (but for closing submissions assisted by Jane Dixon SC and Tim Greenaway acting pro bono)

I, JUDGE JENNIFER COATE, Coroner, having investigated the death of

LYNETTE MAY PHILLIPS

AND having held an Inquest in relation to this death on 19, 20, 21 and 22 September 2011
at MELBOURNE

find that the identity of the deceased was LYNETTE MAY PHILLIPS

born on 24 March 1979 and aged 27 years

and the death occurred between 24 February 2007 and 2 March 2007

at an unknown location

from:

1 (a) NECK COMPRESSION

in the following circumstances:

Summary overview

1. On the afternoon of 2 March 2007, the body of Lynette May Phillips (“Lynette”¹) was discovered immersed in water at Dight’s Falls, Abbotsford. Later that day, the discovery of her body was reported in several media outlets. Prior to her disappearance and death, she had been seen with her former intimate partner, Benjamin Pappas (“Ben”). In the wake of the discovery of Lynette’s body, police investigators commenced trying to locate Ben in order to pursue their investigation into the circumstances in which her death occurred.
2. On 3 March 2007, Ben attended the emergency department at the Alfred Hospital expressing memory loss and thoughts of self harm. He was later released after he confirmed that he did not have a plan and his self harm thoughts had subsided. He agreed to follow up with the Crisis Assessment and Care Team (“C.A.T. team”).
3. On Sunday 4 March 2007, Ben spoke to a friend, at which time the news story relating to the discovery of Lynette’s body was discussed. Later that day, Ben rang the Alfred Hospital C.A.T. team and requested a home visit. The C.A.T team described Ben as being in an agitated state and attempts were made to contact his doctor. Ben had been staying with a

¹ The family confirmed that this was the way in which they wished Lynette to be known for the purpose of this Inquest and Finding.

friend, Dominic Kekich. Ben left Dominic's premises at around 10.30pm on the evening of 4 March 2007, stating he had found alternative accommodation. After leaving Dominic's home, Ben was not seen or heard from again by friends or family.

4. On Saturday 10 March 2007, Ben's body was found beneath a pier at Victoria Dock. It was the opinion of Victoria Police investigators that Ben had killed Lynette and disposed of her body in the Yarra River before killing himself on or soon after 4 March 2007.²
5. Ben was the only suspect identified by police in their investigation into the death of Lynette Phillips. The police found no evidence of any other person involved in the death of Lynette and no suspicious circumstances surrounding Ben's death.

Mandatory Findings

6. Section 67 (1) of the Coroners Act 2008 (Vic) sets out the mandatory matters a coroner must find if possible as distinct from the discretion a coroner has to make any comment or recommendations on any matter connected with the death including matters related to public health and safety or the administration of justice.³
7. Section 67 provides that a coroner investigating a death must find if possible-
 - (a) the identity of the deceased;
 - (b) the cause of death ; and
 - (c) the circumstances in which the death occurred

Identity (S.67(1) (a))

8. Due to the effects of being submerged in the water for a period, Lynette was considered not suitable for visual identification. Lynette's identity was established by way of a fingerprint match.

² Inquest Brief, p. 1-12 : See Coronial Finding: Benjamin Jason Pappas 2007/0957

³ S. 67(3) *Coroners Act 2008*.

Cause of death (S.67 (1) (b))

9. As set out above, a coroner investigating the death must also find if possible the cause of death. This is generally accepted as meaning the medical cause of death.
10. Forensic pathologist Dr Michael Burke performed an autopsy on Lynette at 8.00pm on 2 March 2007.⁴ Dr Burke found a bruise on Lynette's jaw and a fracture of her thyroid cartilage (larynx), commonly found in cases of strangulation. Whilst Dr Burke noted that he did not make other findings usual in cases of strangulation, such as associated bruising, injuries to the skin of the neck, and petechial haemorrhages, he commented that there was evidence in the forensic literature of petechial haemorrhages of victims of strangulation progressively disappearing if immersed in fresh or salt water over a period of time.
11. Dr Burke estimated that Lynette had been deceased for approximately 5 to 7 days prior to being discovered, although he noted the difficulty of making such estimates. No evidence of any significant natural disease process was present.
12. On the basis of all of his findings set out in his autopsy report, Dr Burke provided his opinion that the cause of Lynette's death was consistent with neck compression.⁵

The circumstances in which the death occurred (s. 67 (1) (c))

13. The main focus of this investigation and Inquest was the circumstances in which Lynette's death occurred.
14. Detective Senior Sergeant Rowland Legg was in charge of the homicide investigation into Lynette's death. He gave evidence at the Inquest of the investigations undertaken in an endeavour to get as much information as possible about how Lynette died and how her body came to be in the river, and what person or persons may have been involved in either.
15. Detective Senior Constable Barry as the investigating member for the coronial investigation compiled the Inquest Brief and also gave evidence as to the investigations police had undertaken into Lynette's death and the search for those involved.

⁴ Autopsy report of Dr Burke: Exhibit 1

⁵ Ibid

Lynette's Background

16. Lynette was 27 years of age when she died. She grew up in the Keilor Downs area with her parents Cheryl Dyson (formally Nancarrow) and Damien Phillips. Lynette attended Keilor Downs Secondary College and Princes Park High School.⁶ Her parents separated when she was about 15, and her father moved to Queensland. Lynette had a sister, Wendy Phillips, and a half brother, Harley Nancarrow. Lynette was described by her family as a generous and giving person, who would willingly lend assistance to others in need.⁷
17. Lynette was not working at the time of her death, but had been expressing an interest in pursuing further education. As a young adult she had produced some original music and written pieces that were used in a community arts project focusing on homelessness.⁸ Prior to her death, Lynette was living in transitional accommodation in Balston Street, Balaclava.
18. Lynette had, for many years, struggled with drug use. She had made numerous attempts to overcome this, via pharmacotherapy and detoxification programs, as well as participation in Narcotics Anonymous. Nevertheless, this remained an issue up until the time she died, and created a particular vulnerability in her life that left her struggling with her self-esteem.⁹

Lynette's relationship with Benjamin Pappas

19. Lynette met Ben in February 2005. They soon formed an intimate relationship and within the first month of meeting, Ben had moved into Lynette's flat.
20. Ben had been a professional skateboard rider and had earned an international reputation for his ability in this area. He had lived in the United States for several years, where he competed in various skateboard tournaments. This came to end in 1999 when Ben was found in possession of cocaine while entering Australia. As a result, he lost his passport and was unable to continue his international career. This led to a personal decline, whereby Ben was treated for a range of conditions including depression, drug induced psychosis, paranoia and poly-substance abuse.¹⁰

⁶ Statement of Wendy Phillips, Inquest Brief p.128 Exhibit 2

⁷ Submission prepared by Jane Dixon and Tim Greenway, dated 17 April 2012

⁸ Statement of Sian Davies p.147

⁹ Evidence of Alison Baillie, Transcript p.203

¹⁰ Statement of Dr Michael Kozminsky, Inquest Brief, p.183

History of family violence

21. The relationship between Lynette and Ben featured a clearly documented history of family violence. This included physical and verbal abuse, property damage and controlling behaviour perpetrated by Ben against Lynette. Lynette had confided in her sister, Wendy Phillips, that she had been assaulted by Ben on a number of occasions. Ms Phillips stated that although she did not witness any incidents, she observed bruises on Lynette, which Lynette attributed to Ben hitting her.¹¹
22. On 23 February 2006, Lynette obtained an interim-intervention order against Ben. The application stated that Ben had physically assaulted her after an incident at a party on 11 February 2006, leaving her with a fractured nose and bruising to her face, head and body. The application also set out other instances of physical violence and property damage that Lynette stated had occurred in the months preceding this event. The order was revoked on the return date for the hearing on 23 March 2006.¹² This incident was not reported to the police.
23. Further, the evidence contained in the Inquest Brief is that on 6 July 2006, Ben became abusive and threatening toward Lynette at the Flinders Street Railway Station. In a statement made to police on that occasion, Lynette stated that during a medical appointment with their general practitioner Dr Kozminsky, which she attended together with Ben, she had learnt that she had contracted Hepatitis C. On the train ride back to the city Ben became angry and abusive, and deliberately cut his hand to flick blood on Lynette. Lynette reported to police that during this incident Ben took her mobile phone and smashed it on the ground. This incident was reported to police.
24. As a result of this incident, Victoria Police applied for an intervention order against Ben.¹³ The order was made on 11 July 2006 for the period of one year and was therefore current at the time of Lynette's death. Two applications to have that order revoked were made, on 11 September 2006 and 5 October 2006; both were struck out. The reason for these applications to revoke being struck out is not known, and is not recorded on the Court's decision sheet.

¹¹ Statement of Wendy Phillips, Inquest Brief, p.130

¹² Inquest Brief, p.3

¹³ Inquest Brief, p.3

Lynette's efforts to end her relationship with Ben and address her drug use prior to her death

25. Lynette made a number of efforts to extricate herself from the relationship with Ben. After the incident on 6 July 2006, she sought the assistance of a family violence service and entered crisis accommodation. On 18 July 2006, Lynette met a family violence outreach worker from the Salvation Army, Alison Baillie. At this time, Lynette told Ms Baillie that she had been in a relationship with Ben for about a year and a half and that she had left him about six times. She stated there had been police involvement twice.¹⁴
26. Lynette remained in crisis accommodation from July until September 2006. During this time, she was offered counselling, material support and assistance to look for housing.
27. In early September 2006, Lynette moved into transitional accommodation in Balston Street, Balaclava which was provided through Homeground Services. This was intended to be a temporary arrangement for approximately a year until more permanent accommodation could be secured. Lynette remained living in this accommodation up until the time of her death.
28. Whilst assisting Lynette with the move into Balston Street, Ms Baillie attended Lynette's former address with her. She observed Lynette's bed to be broken and a hole in the wall, which Lynette had attributed to the actions of Ben.
29. On 12 September 2006, Lynette rang Ms Baillie and stated she had lost her diary and missed her first counselling appointment. Ms Baillie saw Lynette the following day, to further assist with accommodation arrangements. At this time, Lynette informed Ms Baillie that Ben had been calling her and requesting she withdraw the intervention order. Lynette also stated she felt like relapsing into drug use. Ms Baillie recalled that they discussed safety issues if the intervention order was revoked, and she suggested to Lynette that she change her mobile phone number to prevent Ben from contacting her.
30. From 15 to 29 September 2006, Ms Baillie made several attempts to contact Lynette in order to facilitate further counselling appointments. During this period Lynette was experiencing difficulties and described herself as being in a "*bad place*."¹⁵ By the beginning of October

¹⁴ Statement of Alison Baillie, Inquest Brief p.168

¹⁵ Statement of Alison Baillie, Inquest Brief p.171

2006, approximately five counselling appointments had been arranged by Ms Baillie. However, Lynette had not attended any of these.

31. On 27 October 2006, Lynette called Ms Baillie. She stated she had been seeing Ben again, but had realised this was wrong because he continued to be violent and she wanted him out of her life. Lynette expressed having been through a particularly difficult time, which is why she had not communicated with Ms Baillie.
32. On 10 November 2006 Lynette told Ms Baillie she was trying to stop using suboxone¹⁶ but was experiencing leg cramps. Ms Baillie subsequently organised for Lynette to see a drug and alcohol worker from the Windana Drug and Alcohol Recovery Centre.
33. Ms Baillie had a conversation with Lynette on the telephone on 23 November 2006, at which time she told her "*that Ben had been to her property, that she gave him her address and that she bumped into him at the doctors...and they got to talking.*"¹⁷ Lynette informed Ms Baillie she had given Ben some money and medication, and that he had been verbally abusive, and refused to pay her back. Lynette was distressed, but stated she did not consider that moving was necessary. The following day, Lynette spoke to Ms Baillie and stated she was withdrawing from her medication and heroin use, and that her mother was coming to stay. Ms Baillie stated that Lynette was also assessed for a detoxification program at Windana on 11 December 2006.
34. On 21 December 2006, Ms Baillie visited Lynette at home and provided her with some food vouchers. Lynette stated she was having a bit of contact with Ben, and that he was calling her occasionally. Lynette stated that she was finding things difficult because she still had feelings for Ben even though she believed the relationship would not work due to his violence. Ms Baillie discussed safety issues and the intervention order with Lynette, and the possibility of counselling to address her feelings for Ben.
35. Ms Baillie spoke with Lynette on 28 December 2006, at which time she was happy as she had been accepted into a drug detoxification program and had spent an enjoyable Christmas with her family.

¹⁶ Suboxone is a preparation of buprenorphine and naloxone, and is approved for opioid replacement therapy in Australia.

¹⁷ Statement of Alison Baillie, Inquest Brief p.172

36. On 2 January 2007 Lynette entered detoxification. She was supported in her admission by Ms Baillie. While she was there, Lynette informed Ms Baillie that Ben had contacted her by telephone. Lynette left the program early, on 12 January 2007, as she informed Ms Baillie that she had a wedding to attend and had been accepted into a TAFE course at Swinburne.
37. From 14 January 2007, Ms Baillie observed that Lynette's situation began to deteriorate. Ms Baillie gave evidence that Lynette was struggling with her heroin use throughout January and February 2007. On 25 January 2007, Lynette told Ms Baillie she had met a man at Narcotics Anonymous and they had been using heroin together for approximately a week. A few days later, on 29 January 2007, Ms Baillie spoke to Lynette and her voice sounded slurred. Lynette was with friends and asked Ms Baillie to call her back. Lynette rang Ms Baillie on 31 January 2007 and stated that she had missed the counselling appointments that had been arranged.
38. Ms Baillie had several conversations with Lynette during February 2007, mainly connected to housing matters. Lynette disclosed that her drug use was an issue and she was still using heroin.
39. The last time Ms Baillie saw Lynette was on 23 February 2007. On this occasion, she took Lynette to see her general practitioner, Dr Michael Kozminsky. Ms Baillie described Lynette as falling asleep in the car and during the appointment, which Lynette attributed to a side effect of her medication. At the conclusion of the appointment, Lynette told Ms Baillie about her contact with Ben. Lynette told her Ben had accused her of flirting with other men, but that he wanted to resume their relationship. Lynette informed Ms Baillie that she had met Ben for coffee recently and that they had exchanged text messages. Ms Baillie raised her concerns that Ben was trying to control Lynette, and it seems Lynette did express her intention to try and stop contacting him. Once again, Ms Baillie discussed the intervention order as a way of preventing Ben's harassment.
40. At the conclusion of this meeting Ms Baillie informed Lynette that she was leaving her position and that she could contact another worker from the service. Ms Baillie stated Lynette was annoyed with this news. Later that day, Ms Baillie spoke with Lynette again, in respect to an appointment for Lynette to have her glasses replaced. This was the last contact Ms Baillie had with Lynette prior to her death.¹⁸

¹⁸ Statement of Allison Baillie, Inquest Brief, p.177

Circumstances preceding Lynette's death

41. On 24 February 2007, Lynette was contacted by a friend and invited to a nightclub. Lynette sought to include Ben in those arrangements.
42. At around 7.40pm that evening, Lynette spoke to an associate who requested she assist him to obtain amphetamines. He arranged to pick her up. Along the way, Lynette requested they collect Ben. A fourth associate was also collected and the parties drove to a location in Burwood to purchase the amphetamines.
43. After the purchase, Lynette and Ben were driven back to her flat at Balston Street. They arrived there between 10.30 and 11.00pm on the evening of 24 February 2007. Once home, Lynette contacted a needle exchange program run by the Inner South Community Health Service. Workers from the service met Lynette on the footpath outside her flat at about 10.30pm and provided her with clean syringes.¹⁹ This is the last known sighting of Lynette alive.
44. During the hours of 11.36 on 24 February and 2.39am on 25 February 2007, thirteen calls were made from Lynette's mobile phone to Bevan Davison, a friend of Ben's.²⁰ None of these calls were answered. Between 11.40 on 24 February and 2.16am on 25 February 4 calls were made from Lynette's phone to the phone of her friend Frances Blake, with whom she had been earlier in the evening. None of these calls were answered. No calls were made from Lynette's mobile from 2.39am until 5.01am when a call was made to Ben's brother, Coco Nkrumah. This call lasted about 70 seconds.²¹ No further calls were made from Lynette's phone after this time. Numerous calls were made to Lynette's phone after 2.39am but none of these were answered.
45. There is no evidence of any person either having seen or spoken to Lynette after 24 February 2007. Attempts to contact her by friends and family from 25 February 2007 onward were unsuccessful.

¹⁹ Inquest Brief, p.5

²⁰ Statement of Bevan Davison, Inquest Brief, p.122

²¹ Coco Nkrumah states that he did not speak to Ben at this time, Transcript, p.116

Discovery of Lynette's body and subsequent events

46. Some evidence of Ben's movements from the time he was last seen with Lynette are contained in the Inquest Brief. On 27 February 2007, Ben went to the Town Hall Hotel in South Melbourne where he worked and collected his pay. He told his employer he could no longer work there due to personal problems.²²
47. The following day, February 28, Ben went to stay with a friend he had known for some years, Dominic Kekich.²³ He was described by his friend Dominic as sleeping a lot and not very talkative during this time. At around this same time, Dominic had spoken to Ben's mother who had told Dominic that she was worried about Ben as he had been acting "strange" in the last couple of weeks.
48. On the morning of 2 March 2007 Ben told his friend Dominic that he was going to look for work. He was gone all day and returned about 10.30pm that night.
49. On the afternoon of Friday 2 March 2007 at about 2.45pm, Lynette's body was discovered immersed in water at Dight's Falls, Abbotsford, by a passerby. Police and emergency services attended the scene to carry out the retrieval.
50. Once removed from the water, it was evident that Lynette's body had been wrapped in a blue doona cover and weighted down with a backpack which contained two 4 kilogram dumbbells.²⁴
51. Numerous media units arrived while the retrieval was in process, and later reported the story on television, radio and online media sites.
52. At 7.40pm that same Friday evening, Ben contacted the Alfred Hospital Psychiatry Department seeking help.
53. The following day Ben spent time both in and out of Dominic's flat. At 5.20pm that afternoon, Saturday 3 March 2007, Ben attended the emergency department at the Alfred Hospital. He expressed "*suspicious thoughts and memory loss*" fleeting ideas of suicidal

²² Statement of David Bradley, Inquest Brief, p.208

²³ Statement of Dominic Kekich, Inquest Brief, p.90

²⁴ The doona cover that Lynette was found wrapped in was identified by Dominic Kekich as one that he had given Ben Pappas some months earlier. Kekich was able to produce the matching pillow cases that he still had at his apartment.

thoughts. After examination, it was thought that this was consistent with illicit substance use.²⁵ He remained at the hospital until 10.30pm at which time he was stating that he no longer had suicidal thoughts and wanted to return to Dominic's house. When Ben was released, a decision was made that follow up could occur with the Crisis Assessment Treatment Team (C.A.T. team).²⁶

54. On Sunday 4 March 2007, Ben informed Dominic that he had spoken to a friend on the telephone, and had been told that Lynette had been found dead. According to Dominic, Ben was crying and distressed and expressing disbelief at what had happened.²⁷ According to Dominic, Ben asked him "*Have I been myself lately?*" When told by Dominic that he thought he had seemed a bit down, Ben told Dominic that he had been, and that he had been taking "*heaps of Xanax*".²⁸ Dominic stated that Ben also rang his half brother and asked him the same question.
55. Dominic stated that at about 2pm that day, Ben rang the Alfred Hospital C.A.T. team and requested a home visit. At about 4pm, Ben asked Dominic to ring the C.A.T. team again as they still had not arrived. After Dominic made this call, he stated that Ben asked him to lie for him if the C.A.T. team asked him where he had been staying. Ben wanted Dominic to say that he had been staying on friend's couches.
56. The C.A.T. team arrived at about 4.30pm and spoke with Ben and Dominic. After the C.A.T. team left, Dominic told Ben that he would have to find somewhere else to stay in the next day or so. Ben stated that he thought his doctor may help him find accommodation and thereafter made a couple of attempts to contact his general practitioner, Dr Michael Kozminsky, but only got to his answering machine.
57. The C.A.T. assessment was that while Ben did not appear to be displaying psychotic symptoms, his presentation was thought to be consistent with someone experiencing substance abuse issues.²⁹

²⁵ Statement of Dorothy Kesarios, Inquest Brief, p.214-218

²⁶ Ibid

²⁷ Statement of Dominic Kekich, Inquest Brief, p.92

²⁸ Ibid p.93

²⁹ Statement of Peter Crowe, Inquest Brief, p.219

58. In conversation at some stage that day, Dominic stated that Ben said *“What if I have done something stupid, because I can’t remember anything before Tuesday...I can’t remember anything from Tuesday night.... The only thing I can remember is waking up on a bench in the city.”*³⁰
59. Dominic stated that Ben went out for a while shortly after the C.A.T team visit and when he came back Dominic told Ben he had seen the report about Lynette on the news. He stated that Ben told him not to tell him any more. Dominic stated they were both quiet for a while after which time Ben stated he was going to catch a taxi but would not tell Dominic where he was going. Ben called Dominic about 15 minutes after he left, saying he would be back shortly. He returned about 5 minutes later to tell Dominic that he had found somewhere to stay but would not say where or with whom it was that he was going to stay. Dominic states that the two of them watched TV together for a while after this and then at about 10.30pm that evening, Ben left saying he was going out for 2 to 3 hours, but if he did not return that night, he would come back in the morning to get his bags. That was the last time that Dominic saw or had contact with Ben.
60. There is no evidence that Ben was seen alive or heard from again by friends or family. Police investigators were trying to locate Ben from 2 March 2007 in connection to the death of Lynette.
61. On Saturday 10 March 2007, Ben’s body was found beneath a pier at Victoria Dock, Docklands.

Conclusion

62. Taking into account all of the above, including the evidence as to the history of violence Ben perpetrated on Lynette; that Ben was the last person seen with Lynette on the evening of 24 February 2007; the doona cover and dumbbells having been in Ben’s possession prior to Lynette’s death; the evidence of Dr Burke that Lynette had been deceased for 5 – 7 days before being discovered; the descriptions of Ben’s behaviour;³¹ and the totality of Ben’s

³⁰ Tuesday was February 27, 2007.

³¹ Dr Kozminsky described Ben as “*explosive*” and with an “*explosive personality*” and stated of Ben “*he had these fits of absolute rage which then passed very quickly*”, see Transcript p 333-4. Registered psychologist Anita Bonollo saw Ben on four separate occasions, after receiving a referral from Dr Kozminsky. Ms Bonollo provided a report to the court (Inquest Brief p.184) in which she stated that she last saw Ben in September 2006 at which time she thought he was

actions in the wake of Lynette's disappearance, I find that, on the balance of probabilities, between 24 February 2007 and 2 March 2007, Ben caused Lynette's death, and thereafter placed her body in the Yarra River. There was no evidence adduced during the investigation of any other person being involved in either the death of Lynette or the placing of her body in the river.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death.³²

1. Lynette's family sought the opportunity to provide written submissions to the Court in the wake of the close of the evidence. They expressed the wish to wait until the transcript of the proceedings was provided to them before being required to do so. After the transcript was provided, the family then sought more time to allow for some legal assistance to prepare closing written submissions. Jane Dixon SC and Tim Greenaway of Counsel both acting pro bono, prepared and submitted a closing written submission seven months after the close of the evidence.
2. Contained in that written submission are issues as to the complexity for medical practitioners who are treating couples where family violence is either known or suspected by the doctor as being perpetrated by one patient against the other or indeed where one patient has an intervention order against the other and the patients are attending appointments together. This issue arose squarely on the facts in this tragic situation and thus quite properly should be the subject of both submissions and comment pursuant to the VSRFVD process.

Family violence support provided to Lynette

3. Prior to addressing the remaining commentary, I wish to make brief comment about the role of Ms Alison Baillie. The evidence of Ms Baillie reflected not only her considerable knowledge and insight into the complexities of Lynette's life and her relationship with Ben,

showing signs or both suicidal and homicidal tendencies, and psychotic-related symptoms such as paranoia, anger and frustration.

³² The coronial investigation into the death of Lynette Phillips was examined as part of the Victorian Systemic Review of Family Violence Deaths. Positioned within the Coroners Court of Victoria, the VSRFVD provides assistance to Victorian coroners to examine the circumstances in which family violence deaths occur. In addition, the VSRFVD collects and analyses information on family violence related deaths.

but it was clear that Ms Baillie had acted with patience, perseverance and compassion in her dealings with Lynette. Ms Baillie continued to address the risk of further violence faced by Lynette and continued to discuss strategies with Lynette to help increase her safety and understanding of the danger she was in.

Primary health care provided to Lynette prior to her death

4. As outlined above, Lynette sought assistance from a range of service providers to address her exposure to family violence and drug use prior to her death. This included contact with a general practitioner, Dr Michael Kozminsky, who had provided medical assistance to both Lynette and Ben.
5. Dr Michael Kozminsky had been Ben's general practitioner for several years, commencing consultations in January 2000. Shortly after Lynette and Ben commenced their relationship, Ben attended an appointment with Dr Kosminsky on 22 February 2005 with Lynette, from which point she also commenced seeing Dr Kozminsky. Notes made by Dr Kozminsky on this day record Lynette as having a borderline personality disorder, anti-social personality disorder, and drug use.³³
6. During the period that Lynette and Ben were in a relationship, Dr Kozminsky saw the couple both separately and together. Sometimes appointments were conducted consecutively.³⁴ Through his regular contact with both Lynette and Ben, Dr Kozminsky developed first-hand knowledge of the violence that existed in their relationship. This included physical assaults and property damage perpetrated by Ben upon Lynette; separations that occurred following violent incidents; and knowledge of intervention orders made in February 2006 and July 2006.
7. Dr Kozminsky's medical notes make it clear that he was being told by Lynette about Ben's violence towards her. Indeed, the collection of extracts from the medical files of Lynette and Ben put together in the submissions from Counsel for the family not only confirm this, but demonstrate the complex issues that arise for a medical practitioner continuing to treat both patients in these circumstances. The extracts collected read as follows: From Lynette's medical record: (a) 10 October 2005 notes: "*Bad separation from Ben. Ben broke her house and computer.*" (b) 4 March 2006: "*Discuss issues with Ben. Note scarring L upper forehead*"

³³ Statement of Dr Michael Kozminsky, Inquest Brief, p.181

³⁴ Evidence of Dr Michael Kozminsky, Transcript, p.307

- (c) 28 March 2006: *“now AVO out”* (d) 20 June 2006: *“Interpersonal discussions re relationship with Ben. Ben back at her house”* (e) 7 September 2006: *“Back with Ben!!!”* (f) 12 January 2007: *“Dom violence working, Has intervention order”*.
8. From Ben’s medical record (a) 8 September 2005: *“argued with girlfriend Lynette”* (b) 20 February 2006: *“Lyn has intervention order. Was taken to police Sat night and interviewed.”*(c) 7 July 2006: *“Got agitated with Lyn having Hep C. Feels Lyn was acting. Blame game. Lyn wanted to score so he threw her phone away. Intervention order on him”* (d) 31 August 2006: *“Problems separating from Lynette”* (e) 11 September 2006: *“Extreme anger that Lynette didn’t turn up in court”* (f) 28 September 2006: *“Ben Pappas is here and is very angry. He wants you to transfer Lyn to another doctor.”*
9. Dr Kozminsky had known Ben to have several female partners prior to his involvement with Lynette. It was his description of Ben that he took a *“dominating”* and *“commanding”* role in those relationships.³⁵
10. At Inquest, Dr Kozminsky indicated that he was aware of some of the complexities that existed in providing health care to Ben and Lynette once family violence was disclosed. To this end, he explained the actions he had taken to limit their contact, such as making arrangements for prescriptions to be collected from separate pharmacies to avoid them running into each other.³⁶ Dr Kozminksy also stated that Lynette would contact his surgery prior to attending, in order to check that Ben had not turned up unexpectedly.³⁷ According to Dr Kozminsky, he suggested Lynette return to her previous general practitioner, Dr Chow. It was the evidence of Dr Kozminsky that Lynette wanted to remain a patient of his, and thus did not accept this suggestion.³⁸
11. These measures were undoubtedly important, given the evidence of Dr Kozminsky in respect to Ben’s actions at his clinic. For example, Dr Kozminsky recalled that Ben could be *“intrusive”*. He illustrated what he meant by this by explaining Ben would make attempts to

³⁵ Statement of Dr Michael Kozminsky, Inquest Brief, p.183

³⁶ Evidence of Dr Michael Kozminsky, Transcript, p.293

³⁷ Ibid

³⁸ Evidence of Michael Kozminsky, Transcript, p.332

read Lynette's medical records. This had the effect on Dr Kozminsky of modifying the notes he kept about Lynette, particularly in respect to her thoughts of separation.³⁹

12. In connection to the incident that occurred at Flinders Street Station on 6 July 2006 (outlined above), Lynette stated that Ben had become angry with her after she was informed that she had contracted Hepatitis C. Lynette explained she had been highly distressed on receiving this news, and brought Ben into the consultation with Dr Kozminsky. After they left the clinic, Lynette's statement indicates Ben became extremely angry, verbally abusive, and reportedly had flicked his own blood at her and broke her mobile phone.⁴⁰
13. There is some evidence in Dr Kozminsky's statement which also raises the complexity of treating a couple for their drug addiction. Specifically, Dr Kozminsky noted that Lynette tried a rapid detoxification program and a naltrexone implant, but reverted to buprenorphine, as "*Ben did not cope with abstinence.*"⁴¹
14. On 29 September 2006, an entry in Ben's medical records made by Dr Kozminsky notes "*case conference discussion; psychotic; depressive; ?suicide risk; ??murder risk.*"⁴² Although not specified in the notes, given the nature of the relationship between Lynette and Ben at that time, and what is known about women's risk in violent relationships, Lynette was undoubtedly at significant risk when Dr Kozminsky documented these concerns.
15. The evidence in this case is replete with examples of a number of serious issues which arose for Dr Kozminsky as the treating general practitioner in this complex situation. The evidence is that whilst Doctor Kozminsky demonstrated some understanding of the issues pertaining to confidentiality and risk to Lynette, he seemed somewhat in awe of Ben's sporting prowess and this appears to have clouded his judgment with respect to the ordinary boundaries between a doctor and a patient. This was possibly to the detriment of the duty he also owed Lynette to take control of this unacceptable situation and insist on boundaries such as prohibiting Ben from attending Lynette's appointments or looking at her records or insisting that Lynette see another doctor and properly supporting and assisting her to do so.

³⁹ Evidence of Michael Kozminsky, Transcript, p.307

⁴⁰ Appendix X, Statement made by Lynette Phillips dated 6 July 2006.

⁴¹ Statement of Michael Kozminsky, Inquest Brief, p.181

⁴² Medical records for Ben Pappas, Appendix S

16. The doctor's role is one of great responsibility to each and every one of the patients he/she treats. The patient places considerable trust and confidence in their doctor to act in their best interests. Where a patient such as Lynette presents with additional factors that increase the level of vulnerability, it is imperative that this be recognised and responded to accordingly.
17. With respect to Lynette and Ben, it appears that Dr Kozminsky may have overestimated his capacity to safely control this situation. I am not persuaded that Dr Kozminsky, despite his self belief, was fully equipped to handle such a complex situation.
18. I do not conclude that the medical treatment provided to Lynette was compromised to the extent that it was causally connected to her death. There is not an evidentiary basis to come to such a conclusion. However, the review of the facts in this case provides an opportunity for considering how general practitioners might be supported to respond to the complexities of family violence when treating a couple and in particular where there are substance abuse and mental health issues contributing to that complexity.

Evidence of Associate Professor Morton Rawlin

19. For the purpose of this investigation, an expert opinion was sought by the Court from the Victorian Faculty of the Royal Australian College of General Practitioners. It was considered appropriate to go to the College of General Practitioners on the basis that an opinion was sought with respect to the actions of Dr Kozminsky in the context of his conduct as a general practitioner and the issues that arise generally for doctors when treating families or two patients in a relationship where family violence, substance misuse and mental health issues exist. Associate Professor Morton Rawlin was the nominated representative of the College who provided a written report to the Court and gave evidence at the Inquest. Associate Professor Rawlin described his qualifications as including more than 20 years clinical experience in general practice and academic involvement, particularly education and professional standards.⁴³

⁴³ Associate Professor Morton Rawlin stated his qualifications include Bachelor of Medicine and a Masters of Medical Science. He is an Adjunct Associate Professor in General Practice at Sydney University, Chair of the Victorian Faculty of the Royal Australian College of General Practitioners and Chair of the General Practice Mental Health Standards Collaboration.

20. It was the observation of Associate Professor Rawlin that family violence is a common problem and seen “*not infrequently*” in general practice settings.⁴⁴ Specifically, he noted that general practitioners are “*usually the first port of call [for] people coming to the realisation that something’s wrong within their relationship*” in order to seek assistance for dealing with this problem.⁴⁵
21. In respect to assisting patients with a multitude of issues such as those experienced by Lynette and Ben, he noted “*these are very difficult cases to control and negotiate for doctors. Patients with substance abuse and mental health issues are often regarded negatively by doctors as they are patients who take a lot of time and energy to assist and have a roller coaster ride through treatment with relapses and successes.*”⁴⁶
22. Associate Professor Rawlin commented on his knowledge of assisting patients where family violence is present. He stated that while there are no absolute answers about how to handle these situations, it is crucial to have adequate records, clear communication with each party about what can be told to whom, and the ability to maintain firm boundaries between the parties.
23. It was the opinion of Associate Professor Rawlin that it is possible for general practitioners to continue to treat patients in problematic relationships (and indeed was essential in some rural communities), however patient safety needed to be made a priority. In order to achieve this, he stated it was important and necessary to have plans in place to allow “*non-judgmental and adequately timed consultations.*” He further noted the need to consider referring one party to a colleague if possible and providing referrals to support services. Associate Professor Rawlin emphasised the need to act in a prompt way, as the longer the health professional had been seeing the patient, the more difficult it is to impose new structures.
24. At Inquest, Associate Professor Rawlin emphasised the importance of general practitioners being kept up to date with family violence information and the available services. He stated that updates are provided by the Royal Australian College of General Practitioners and the

⁴⁴ Evidence of Morton Rawlin, Transcript p.261

⁴⁵ Evidence of Morton Rawlin, Transcript p.260

⁴⁶ Expert Medical Report for Victorian Coroner’s Court prepared by Associate Professor Morton Rawlin, dated 1 September 2011

Divisions of General Practice, but more needed to be done on a local level, given that support services change and new information becomes available.⁴⁷

25. The evidence from Associate Professor Rawlin was that information is available to general practitioners to support them with their legal obligations (via their insurer) and in terms of their own psychological health and wellbeing. The Court was not provided with evidence about any specialist family violence consultancy service for general practitioners and other health care professionals. Given the likelihood that both general practitioners and other health care professionals will encounter patients who are either a victim or perpetrator of violence, and that they may be called upon to treat both the victim and the perpetrator, a telephone advice service for this group could provide needed assistance and advice in a timely way. If there is potential for a conflict that may compromise the treatment and or safety of one patient, information could be given to the health professional about appropriate actions to take and referrals that could be made.⁴⁸

The importance of ongoing family violence assistance for health care professionals

26. The advice provided to the Court is that many of the issues involving family violence in general practice settings raised during this investigation are of interest to organisations such as General Practice Victoria (GPV) and the Royal Australian College of General Practitioners (RACGP). These organisations, in conjunction with the Department of General Practice at The University of Melbourne, play an important role in disseminating information and building capacity among general practitioners in respect to the identification and response to family violence. Given the prevalence of family violence and the implications it has for a victim's physical and mental health, ongoing efforts by these organisations to ensure the problem is well understood and responded to by health care professionals are essential. This includes adequate training across all stages of a general practitioner's career, from medical school to ongoing professional development for qualified doctors; ensuring the availability and promotion of up-to-date resources that provide information and guidance about the nature,

⁴⁷ Evidence of Morton Rawlin, Transcript p.262

⁴⁸ Services of this kind currently exist in different speciality areas. For example, the Victorian Drug and Alcohol Clinical Advisory Service (DACAS) is described as a specialist telephone consultancy service that provides clinical advice to health professionals who have concerns about their clinical management of patients and clients with alcohol and other drug problems. The service operates free of charge for health and welfare professionals. In another professional domain, the Law Institute of Victoria (LIV) offers support to members to assist with ethical dilemmas encountered by legal professionals (who are members of LIV). Advice is available from an ethics lawyer about a particular ethical dilemma and provided over the telephone or via email.

dynamics and risk factors for family violence; and keeping health care professionals informed of current services and options for increasing victim safety and addressing perpetrator behaviour.

27. The Court has been provided with information about a recent pilot project (funded by the Victorian Women's Trust) and undertaken by GPV that has involved a series of family violence workshops delivered to approximately 100 general practitioners, practice nurses and other health and welfare professionals. The focus of this training has been to improve understanding of family violence, assessing risk and making appropriate referrals. While this is indeed promising, this program undoubtedly represents the 'tip of the iceberg' in terms of its scope and reach. Evidence indicates that effective training for health care professionals requires a multifaceted and sustained approach in order to effect long-term change in practice.⁴⁹ I therefore encourage RACGP, GPV and the Department of General Practice at the University of Melbourne, to consider further development and expansion of family violence training for general practitioners and other health care professionals across the state.
28. Finally, the facts in this tragic case and the opinions provided as to the complexity of the dilemmas that can be faced by general practitioners and other health care specialists illustrate that something more than training and awareness raising should be made available to this professional group. Whilst Guidelines, conferences and consultation and discussion with one's colleagues may provide assistance, it is not sufficient where lives are at stake. Health professionals should be properly supported to face the complexities of the work required of them in this area and provided with an on-call information, support and advice line. Accepting that such a proposal has a range of issues attached to it, rather than *immediately* recommend the development of the advice line, I make the following recommendation:

RECOMMENDATION

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

⁴⁹ Feder, G., Davies, R.A., Baird, K., Dunne, D., Eldridge S., Griffiths, C., Gregory, Al., Howeel, Al., Johnson, M., Ramsay, J., Rutterford, C. & Sharp, D. (2011), 'Identification and referral to improve safety (IRIS) of women experiencing domestic violence with a primary care training and support programme: a cluster randomised controlled trial,' *Lancet*, vol. 378, pp. 1788-95; Hegarty, K., Gunn, J., O'Doherty, L., Taft, A., Chondros, P., Geder, G., Astbury, J. & Brown, S. (2010), 'Women's evaluation of abuse and violence care in general practice: a cluster randomised controlled trial (*weave*),' *BMC Public Health*, vol. 10, no. 2, viewed 28 July 2012 at <http://www.biomedcentral.com/1471-2458/10/2>

Recommendation 1

To provide timely assistance and support to health care professionals responding to family violence, I recommend that the Secretary to the Department of Health, in consultation with General Practice Victoria and an appropriate family violence training organisation, conduct a feasibility study on the establishment of a specialist family violence 'on-call' service for general practitioners and other health care professionals in Victoria. The function of this service would be to provide specialist family violence information and advice to primary health care providers, including guidance on risk and vulnerability indicators, safety planning, and referral pathways to local services. Consideration might be given to incorporating this into an existing information and referral service, whilst ensuring the organisation is sufficiently equipped and resourced to provide this support.

Pursuant to rule 64(3) of the Coroners Court Rules 2009, I order that this finding be published on the internet.

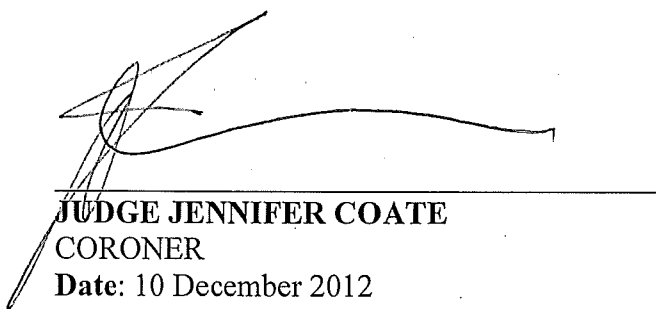
I direct that a copy of this finding be provided to the following for action:

The Secretary to the Department of Health
Executive Director of General Practice Victoria

I direct that a copy of this finding be provided to the following for information only:

Family of Lynette Phillips
Detective Senior Constable David Barry
President, Royal Australian College of General Practitioners
Avant Law, Solicitors for Dr Michael Kozminsky
Associate Professor Rawlin

Signature:



JUDGE JENNIFER COATE
CORONER
Date: 10 December 2012

