



CORONERS REGULATIONS 1996

Form 1

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16th May, 2008
Case No: 3625/06

RECORD OF INVESTIGATION INTO DEATH

I, **PETER WHITE**, Coroner,

having investigated the death of **BRODIE RAE CONSTANCE PANLOCK** with Inquest held at Coronial Services Centre, Southbank on the 1st October to 2nd October, 2007 and 30th to 31st January, 2008

find that the identity of the deceased was **BRODIE RAE CONSTANCE PANLOCK** and that death occurred on 23rd September, 2006 at Alfred Hospital from

1(a). HEAD INJURY

in the following circumstances:

Brodie Panlock was brought up in Heathmont where she lived with her parents and two older brothers. In early 2005, she began working as a waitress at the Café Vamp located at 727 Glenferrie Road, Hawthorn in a full time capacity. At the time, her plan was to raise some money and then take an overseas trip with her brother, Cameron, and his girlfriend, Jess, before returning to TAFE in 2007, where she was intending to study social work.

According to family members, she was an organised, reliable and confident girl who showed compassion and cared for everyone she knew.

'She was a determined young girl who set goals to achieve.'

In March 2006, following her 19th birthday, Brodie Panlock moved from her family home to an apartment at 1/54 Liddiard Street, Hawthorn. After this move, Brodie Panlock still saw her family on a regular basis. Her parents would drop in and see her at the Café.

'The last few months before September she didn't like us going to Café Vamp so we would meet her at her flat. The reason for this we did not know. We would try to find out but Brodie would just change the subject.'

See statement of her father, Mr Damien Panlock Exhibit 3 at Page 2.

According to workmate Nicola Wood, during this period Brodie Panlock was being dealt with in an extremely aggressive and intimidating manner by co-workers and management at the Café. On Nicola Wood's evidence, Café manager, Nick Smallwood, and co-employee, Rhys Macalpine, were the main protagonists and were relentless in their efforts to demean her.

Nicola Wood was also aware that at this time Brodie was in an intimate relationship with Nick Smallwood. It was her view that Brodie put up with Nicks behaviour, as well as the behaviour of others, because she was looking for approval and acceptance, *'and because she cared a lot about Nick.'*

This behaviour took various forms. *'It included putting fish oil in her bag, covering her with chocolate sauce, telling her that she was worthless and didn't deserve to be here, - those sorts of things' and 'they would just grab her and hold her down and put oil over her so she couldn't get away (this occurring) on three or four occasions.'*

See Nicola Wood at Transcript Pages 15, 20 and 25.

This conduct began with Brodie facing it *'every day'*, and initially reacting to it in a manner which was intended to give the impression that it didn't bother her. However, according to M/s Wood it began to have an effect on Brodie, whom she advised to leave. To this, Brodie responded in a manner which suggests that at the time she felt a strong sense of loyalty to her employer, which matter I return to below.

Nicola Wood also noticed that Brodie had been self-harming and had a bandage over her left wrist covering *'small'* cuts.

See Nicola Wood Statement at Page 2 and further discussion at Transcript P15 and 16.

It is further relevant that Nicola Wood took this matter up with Nick Smallwood and from his response that Nick apparently recognised the connection between his behaviour and her unhappiness/depression.

'I remember talking to him about the extent of how she was feeling and how he really had such a hold over her and she listened to all of the things he said and it was really getting her down. And I said you know, how would you feel if it did get to another point where she, you know, not just self harm but took it further and committed suicide and he did say that he would feel pretty bad and the next couple of days he ..slowed down on the insults and stuff for a little while.

He just said that he would take it down a couple of notches and not behave the way that he was behaving, which initiative lasted about two days.'

See Transcript at Pages 18 and 19.

According to Nicola Wood, this discussion took place not long *'maybe a month'* before an incident of self harm which involved Brodie Panlock consuming rat sack and alcohol and

having to go to the Epworth hospital to have her stomach pumped. From Nick Smallwood's statement, we know that this incident occurred in the basement of his apartment block.

See Nick Smallwood Statement at Page 1.

Again from Nicola Wood in regard to this particular incident, Brodie told her that she had been with Nick at his place and wanted to stay over but had become upset when he had kicked her out. This had occurred after they had returned to his apartment from drinks with fellow staff.

Following Brodie's return to work, there was a bit of a lull then (Nick) said things to her like *'if you are going to do it, do it properly those sort of things'*.

See Nicola Wood at Transcript Page 21 and her Statement at Page 4.

Nicola Wood further testified that the café owner Mark De Cruz, (seemed) to find it *'almost amusing.'* Making death humour remarks about Brodie's behaviour and being almost constantly present to witness the conduct of Nick and Rhys, yet not saying anything to either of them about that matter.

According to Nicola Wood, Mark De Cruz, however, evidently understood the inappropriate nature of what was going on as, *'he would sometimes, if it was in the front of house, he would tell - he would say 'tone it down' because there were customers there'*.

(and) *'he knew what was going on and he didn't do anything about it.'*

See Nicola Wood at Transcript Page 22 and 23.

Nicola Wood further testified that between March and September 06, these incidents and comments to Brodie occurred at Café Vamp every day.

One further alleged exchange occurred when the group, *'were sitting and having a drink after hours and Nick said to the group that he could do anything he wanted to Brodie and she'd take it, sexually,'* - and that Brodie was present at this time.

See Nicola Wood at Transcript p 17.

School girlfriend, Ashlea Cooper, testified about what Brodie had spoken of concerning her relationship with Nick Smallwood and how at the beginning it seemed she was really happy but that things began to change and poignantly that,

'All Brodie ever wanted was to have a boyfriend and be in love Although Brodie said, she was fine with not being Nick's girlfriend she hoped deep down that it would happen in time. She was head over heels in love with him.'

According to Ashlea Cooper, Brodie also spoke to her of her long hours at work and the treatment she was receiving at the hands of her male colleagues and I note here that her deteriorating condition was apparent to the extent that Ashlea Cooper endeavoured to put

Brodie in touch with professional assistance, an idea which Brodie seemed to embrace. There is no independent evidence which establishes whether she was receiving such assistance.

I also note that Brodie claimed to Ashlea that after her return to work following the rat poison consumption, she found rat poison in her pay envelope, an idea which Nick Smallwood, publicly ridiculed. M/s Cooper also testified as to Brodie telling her of other incidents (of bullying behaviour), which are alleged to have occurred following her return to work.

See Statement of Ashley Cooper at Page 1 to 3 and Transcript at Page 51 and 52.

Further evidence detailing the treatment suffered by Brodie at her place of employment, was provided by Meghan Chester who, at the relevant time, was a 29 year old Social Work Student at RMIT and worked at Café Vamp for a period of some 9 months up until her departure at the end of August, 2006.

'I can describe Brodie as a buoyant, chirpy, compassionate, patient, giving girl. She was like a little ray of sunshine. Unfortunately, she was young, naïve and working in an environment that encouraged and supported bullying behaviour. In my opinion, Nick and Rhys were successful in bullying Brodie because she felt she deserved it. She had no confidence in her beauty or self worth. Nick was the manager and Rhys was his side kick at Café Vamp. But no matter what she did, be it right or wrong, Brodie could never do anything right by Mark, the owner, Nick, Rhys or Gabe. She got such a hard time from all of them. I have worked in the hospitality industry for ten years but I have never seen anything like what these four males did to Brodie and Unfortunately, Brodie for some unknown reason was infatuated with Nick. Brodie stated to me that Nick was her first sexual partner. This infatuation became out of control and Nick took advantage of Brodie's vulnerability and naiveté. He abused her verbally, emotionally and psychologically.'

See Meghan Chester Statement at page 1 and 2, where her observations concerning physical assaults carried out by Nick Smallwood on Brodie in the workplace, are also detailed.

Meghan Chester further testified as to specific examples of the bullying, which took place. See Transcript at Pages 85-87 and also at page 96, and of her efforts to persuade Nick and Rhys to desist. See Transcript at Page 87. It is also relevant that she alleged that she discussed her concerns for Brodie with Mark De Cruz to which advice he did not respond. See Transcript at Page 96, 100 and 101.

M/s Chester also testified that part of the reason she left her position at Vamp was because she could not handle watching what was happening to Brodie.

It is also the case that Meghan Chester attempted to help Brodie and spoke to her about her relationship with Nick. She also spoke to both Nick and Rhys about their behaviour towards her, but Brodie asked her not to *'stir the pot with Nick'*, and did not want her family to know about her work place situation.

It is relevant to note here that following the evidence of Mr Panlock, M/s Wood and M/s Chester, both Mr De Cruz, who was legally represented, and Mr Greenwood, who was not, successfully applied to be excused from testifying on the grounds that they were entitled to the privilege against self incrimination.

Rhys Macalpine who was legally represented, did not make a similar application and his exculpatory version of events is found at Transcript Pages 181 to 223.

In regard to this testimony, I note that at inquest he gave incalpatory evidence concerning the bullying conduct of both Mr Smallwood and Head Chef, Mr Gabriel Twoomey, which allegations were not made part of his earlier statement to police. His evidence was also significantly different than his earlier statement in that he testified that Brodie had in fact been a victim of bullying, rather than a part of the sort of horseplay that he had claimed, normally took place in restaurants.

It is also relevant that, when confronted with the various allegations of both Nicola Wood and Meghan Chester, suggesting he had been a willing participant and had been spoken to about his behaviour, his frequent response was that he could not remember or had no recollection, while it was equally the case that he demonstrated a quite specific recollection in regard to the words and activities of both Nick Smallwood and Gabriel Toomey, (despite a lack of assistance for this version from his earlier statement to police).

September 20th, 2006.

On Wednesday the 20th of September, Brodie attended a gallery opening in Richmond. Although he had originally intended to attend also, Nick Smallwood decided to go directly home after finishing work at around 6 pm. At about 9 pm, he received a call from Brodie who offered him money to come to Swan Street, pick her up and drive her home. Nick picked her up at around 9.30 and drove her home and then went up to her flat ostensibly so that he could get his money. Once in the flat Brodie, who was influenced by her earlier alcohol intake, and Nick were intimate and thereafter Nick left with Brodie following him to his car, attempting unsuccessfully to persuade him to stay overnight.

Later, we know that Brodie contacted her schoolhood friend, Ashlea Cooper.

At the time she was crying *'hysterically.'* She then related the story of her encounter with Nick and about his departure and

'how she begged him to stay but that he just got up and left.'

'(I) can't face him at work.'

'She said I've made a fool of myself. I was begging him to stay. How embarrassing. I want to die. Ash, it is over I have had enough. It's over.'

See Ashlea Cooper Statement at Page 3.

At approximately 10.30 pm on Wednesday the 20th of September, Brodie was observed standing outside an apartment block in Wakefield Street, Hawthorn. She told the witness that she had been locked out and in this way was able to gain access. According to this

witness, she appeared *'shut off, blank and almost motionless.'* She then asked the witness *"how do I get to the balcony,"* and then followed her into the building, where she went out on to the balcony. After having a brief conversation with the witnesses' boyfriend and another male, Brodie left.

It is not in dispute that at 11.03pm she sent a message to Nick, which he stated, he found the following day.

'I'm sorry this is what I need to do. Sorry.' See Nick Smallwood's statement at Page 3.

At some time between 11pm and 11.15pm, Brodie gained entry to the multi level car park located in Wakefield Street, Hawthorn and walked to the top level. Thereafter, she jumped almost certainly from that 4th level, landing on the ground level, the resulting impact causing severe head injuries from which injuries she subsequently died at the Alfred Hospital on Saturday the 23rd of September, 2006.

Finding

Brodie Panlock commenced her employment at the Vamp Café, Glenferrie Road, Hawthorn, at the age of 18 years. Soon she was working a six-day week on shifts that frequently kept her at work for periods of up to 12 hours. See Transcript at Page 102.

It is also the case that she was at the time emotionally vulnerable, because of her low self-esteem and because of her age and inexperience and that she soon became infatuated with her manager Mr Nick Smallwood. Later she moved out of home, to an apartment located in the vicinity of her place of employment.

At or about this time Brodie Panlock and Nick Smallwood, who was described by witness Rhys Macalpine, *'as someone who already had a no. of notches on his belt,'* commenced an intimate relationship, which continued intermittently over some 15 months and lasted until her death. During this period, the relationship became unhealthy as Nick Smallwood, Rhys Macalpine, and from time to time others, systematically bullied her, both physically and emotionally, this conduct causing her anxiety and unhappiness. In this regard, I note here that I find that Rhys Macalpine was not a credible witness and that I attach no weight to his testimony.

On all of the evidence, I am satisfied that this almost daily routine of inappropriate pressure at work, came to a head on Wednesday night the 20th of September 2006 when, following an act of intimacy and Nick Smallwood's almost immediate rejection of her, Brodie Panlock jumped from the 4th level of a multi-storied car park situated in Wakefield Street Hawthorn, intending to take her own life.

It is, in my view, apparent from all of the evidence and most specifically her last conversations with Ashlea Cooper, that at this time she felt what she considered an unbearable level of humiliation concerning her relationship with Nick Smallwood. It is also the case that she, understandably, feared that her conduct earlier that evening would, in the following days, become the subject of further abuse and public ridicule by male colleagues.

I further find that her employer and a Director of the Café's Holding Company, Mr Mark De Cruz, was aware from an early point of the nature of the relationship that existed between Brodie Panlock and Nick Smallwood and also became aware of the bullying manner in which she was being treated in his Cafe. Sadly, perhaps for reasons connected with his desire to appease more highly valued and senior (male) employees, Mr De Cruz turned a blind eye and did nothing to prevent the bullying from continuing. In so finding, I hold that Nicola Wood's observations as to these matters were both truthful and accurate and I am also satisfied that this inaction continued despite the caution that he received from Meghan Chester.

This inaction I consider must have been a significant and quite possibly a confusing setback for Brodie Panlock who was by nature an extremely loyal employee.

I must also observe that the manner in which the less skilled positions at the Vamp Café appear to have been filled, without an organised induction and in the absence of discussion about inappropriate behaviour including bullying, gives rise to the suspicion that the level of managerial supervision generally exercised by Mr De Cruz, in regard to his less skilled employees, was inadequate.

In addition, the absence of satisfactory records concerning both shifts and the payments of salary to this same group which included Brodie Panlock, gives rise to the same sort of concern.

I note here my further view that physical and psychological bullying, when carried out in the work place, is a very serious matter and potentially dangerous to all involved. Evidence of the development of this kind of harassment in an industry, which systematically employs teenage women, is perhaps indicative of a wider problem which warrants the closer examination of WorkSafe Victoria.

Recommendations

I recommend that WorkSafe Victoria examines the evidence in this case and, in consultation with its legal advisers, takes such action against person(s) named in this finding as it deems now to be appropriate.

This case further emphasises the importance of establishing and maintaining an appropriate anti-bullying policy for those operating within smallish establishments within the hospitality industry.

Not unusually young and inexperienced persons are appointed to work as sandwich hands and food servers and their supervisors may be only marginally older and marginally more experienced. In my view, induction courses should be uniformly designed by WorkSafe to be provided by employers to all employees in this industry, with the objective of providing clear instruction in regard to contractual duties to include, but not necessarily be limited to, such matters as bullying and harassment.

In conclusion, I would like to thank the witnesses who have testified in this inquest, together with the Coroners assistant and both Counsels representing interested parties, for their assistance.

I am especially grateful to the family of Brodie Panlock for engaging in what for them can only have been a deeply painful exercise.

Peter White
Coroner.

Distribution.

The Family of Brodie Panlock
Mr Nick Smallwood
Mr Rhys Macalpine
Mr Gabriel Twoomey
Mr Marc De Cruz
Map Foundation Pty Ltd.
WorkSafe Victoria