

CITATION: *Inquest into the death of Aidan Bott* [2008] NTMC 025

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): D0138/2006

DELIVERED ON: 2 May 2008

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HEARING DATE(s): 26-28 February 2008
18 March 2008

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: Unexpected Student Death by accident,
Schoolyard Safety, Responsibilities of
School Authorities.

REPRESENTATION:

Counsel:

Assisting:	Jody Truman
Catholic Education Office:	Ben O'Loughlin, Tom Berkley
Mother:	Michael Powell

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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0138/2006

In the matter of an Inquest into the death of

AIDAN BOTT
ON 29 AUGUST 2006
AT ROYAL DARWIN HOSPITAL

FINDINGS

(Delivered)

Mr Greg Cavanagh SM:

1. Aidan Vincent Bott (“Aidan”) was a Caucasian male youth born on 9 February 1997 in Kew, Victoria. Aidan was the first child to Robyn Faye Hunt and Warrick Ian Bott. Aidan died at about 9.08am on 29 August 2006 at the Royal Darwin Hospital after his ventilation was ceased, following discussions with his family, earlier that morning.
2. His death was unexpected and thus reportable to the Coroner pursuant to s12 of the *Coroner’s Act*. The holding of a public inquest is not mandatory but was held as a matter of my discretion pursuant to s15 of that Act.
3. Pursuant to section 34 of the *Coroners Act*, I am required to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

- (i) the identity of the deceased person;
- (ii) the time and place of death;
- (iii) the cause of death;

(iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act;

1. The deceased was male.
2. The deceased's name was Aidan Vincent Bott.
3. The deceased was of caucasian decent.
4. The cause of death was reported to the Coroner.
5. The cause of death was confirmed by post mortem examination carried out by Dr Paul Boterill.
6. The deceased's mother was Robyn Faye Hunt. The deceased father was Warwick Ian Bott.
7. The deceased lived at 12 Bailey Circuit, Driver.

(v) any relevant circumstances concerning the death.”

4. Section 34(2) of the Act operates to extend my function as follows:

“A Coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.”

5. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

Introduction

6. At the time of his death Aidan was 9 years of age and a student in year 4 at the St Mary’s Primary school (“the school”). He had been a student at the school for 2 years.
7. Ms Jodi Truman appeared as counsel assisting on each day of this inquest from 26 to 28 February and 18 March 2008. I thank Ms Truman for her thoroughness. Mr Ben O’Loughlin appeared as Counsel for the Catholic Education Office and St Mary’s Primary School from 26 to 28 February 2008 inclusive. Subsequently Mr Tom Berkley of Counsel appeared on the final day being 18 March 2008. Mr Michael Powell appeared as Counsel for the mother of Aidan, namely Robyn Faye Hunt, throughout.

Events of 22 August 2006

8. At about 1.40pm on the afternoon of Tuesday 22 August 2006 Aidan was on his lunch break in the school courtyard. He was sitting with 4 close friends, namely Taylor Wauchope, Aiden Hernandes, Stuart Parker and Khyan Spencer. Each of these young boys had been friends with Aidan for a significant period of time. They were Aidan’s “mates”.
9. It is recorded in the taped interviews with these 4 friends that all boys state they were under an African Mahogany Tree located in the courtyard of St Mary’s Primary School.

10. The African Mahogany tree that the boys were under was, at the time, a central feature in the playground area. It had constructed around it concrete borders which formed a seating area regularly used by students at the school. A mosaic had been placed around that concrete border as a feature. None of the boys who were with Aidan on this fateful day were called to give evidence at this inquest. That is appropriate given their ages and the significant distress that they have suffered as a result of the death of their close friend. Further, the factual events as to what occurred beneath that African Mahogany Tree speak for themselves.
11. The transcripts of the recorded statements with each of Aidan's four friends reveal that the boys were there under the African Mahogany Tree eating. It appears likely, and I find that it was the case, that Aidan was the only boy either sitting or kneeling at the time of the incident.
12. Some of the boys state that they heard a large cracking sound and they ran. The others state that they ran because they saw the others running. Because Aidan was either sitting or kneeling it appears, and I find, that he was simply unable to get up in time and run with his friends.
13. Also in the school courtyard area at the time of the incident was the maintenance/groundsman of the school, namely Mr David Butt. Mr Butt gave a statement to police, which is in evidence before me, that as he was nearing the area where Aidan and his friends were he also heard a large cracking sound. Mr Butt stated in his statement that when he heard that sound he looked up and saw a large branch from the African Mahogany Tree break off. He stated that the branch was approximately 8 to 9 meters above him and was approximately 10 meters in length.
14. Mr Butt's statement was that when he first saw the branch it was leaning about 45 degrees down and continuing to swing towards the ground. As it swung it reversed direction and spun around and hit Aidan to the right side of the crown of his head and then grazed down Aidan's right shoulder.

15. Mr Butt gave evidence before me that it was immediately obvious to him that Aidan's injuries were fatal. Aidan appeared to Mr Butt, to have suffered significant head injuries and he noted that Aidan's head was instantly swelling significantly. Mr Butt immediately attended upon Aidan and in fact was able to grab him before he slumped over onto the raised mosaic garden bed surrounding the tree. Mr Butt placed Aidan into the coma position and tried to keep him comfortable whilst medical assistance was sought from St John's Ambulance.
16. Unfortunately, by the time St John's Ambulance had arrived, Aidan's condition had significantly deteriorated. It is recorded that St John's Ambulance were called at approximately 1.48pm and arrived at the scene at approximately 1.58pm. There is some evidence that the information given to St John's Ambulance as to Aidan's condition was incorrect and therefore St John's Ambulance had not given the call the correct coding.
17. Although this is the case, I find, based on the evidence before me, that even if the correct information had been given, and the matter had been correctly coded, that this would not have had a significant impact upon Aidan's condition, nor the final outcome of his death. This is further supported by the statutory declaration of Dr Sarah Collins, which is in evidence, that states that the delay following as a result of the incorrect coding did not impact or assist in the death of Aidan in any way.
18. It is clear that in the short minutes following this most distressing occurrence that those in immediate attendance were in a rush, endeavouring to do everything they possibly could for Aidan and were also in shock at the occurrence. I find therefore that those in immediate attendance did all that they could on that day, in what would have been extremely shocking and distressful circumstances. I am sure that the events of this day will live with them forever.

19. Upon Aidan being admitted to the Royal Darwin Hospital the medical records, which are in evidence before me, indicate he underwent a right temporo-parietal craniectomy that afternoon. This procedure was performed for evacuation of a subdural haematoma and insertion of an intracranial monitor. Unfortunately, despite this procedure, Aidan's condition did not improve and by 28 August 2006 his pupils had become fixed and dilated. As stated previously, following discussions with his family, ventilation was ceased on the morning of 29 August 2006.
20. In plain terms the autopsy findings contained in the report of forensic pathologist, Dr Paull Botterill, included evidence of emergency skull surgery with a break over the right side of Aidan's skull, some blood over the inner skull surface, swelling of the brain consistent with irreversible brain injury and an excess of fluid in his lungs.

Formal Findings

21. Pursuant to section 34 of the *Coroner's Act* ("the Act"), I find, as a result of evidence adduced at the public inquest, as follows:
 - (i) The identity of the deceased person was Aidan Vincent Bott born 9 February 1997. The deceased resided at 12 Bailey Circuit, Driver, in the Northern Territory of Australia.
 - (ii) The time and place of death was at the Royal Darwin Hospital, at 9.08am on Tuesday 29 August 2006.
 - (iii) The cause of death was a head injury.
 - (iv) Particulars required to register the death:
 1. The deceased was male.
 2. The deceased was of Caucasian decent.
 3. The cause of death was reported to the Coroner.

4. The cause of death was confirmed by post mortem examination carried out by Dr Paull Botterill.

The evidence related to the history of the African Mahogany Tree, and its maintenance, at the school

22. What is now known as St Mary's School itself was opened for admissions for the first time in or about 1971. Obviously, and as is to be expected, school staff, including Principal and garden maintenance/groundsman have changed on a regular basis since that time.
23. One of the witnesses, Mrs Honor La'Porte, who was the acting Principal at the time of this incident, had in fact commenced employment at the school in 1972. Mrs La'Porte gave evidence that the trees in the courtyard, including the relevant African Mahogany Tree, had been planted in the courtyard before she had even started at the school. Mrs La'Porte is also of the opinion that the concrete borders around the trees were also in place prior to her starting.
24. Most helpfully Mrs La-Porte was able to produce two photographs of the school, which were tendered in evidence, which show the courtyard area and the African Mahogany Trees, which clearly depict the concrete borders around them in about 1978 and 1981.
25. Sister Helen Little was the Principal at the school from 1992 to the end of the school year in 2002. She gave evidence that when she was Principal she would ensure that the trees around the entire school were inspected by a tree lopping company every six to twelve months. Sister Helen also gave a statutory declaration, which is in evidence, which states that as part of this inspection she called upon the relevant tree company to identify the trees, which required attention, and to specify what needed to be done.

26. This work would ordinarily take place on a weekend or during the school holidays. Occasionally, if the work was urgent, it would be conducted during the week. Sister Helen's statement was that the kind of work that took place involved removing dead wood from the trees, thinning them out and in some cases totally removing the trees for various reasons, including if there were white ants, their age or some other safety aspect.
27. Although it is noteworthy that Sister Helen Little had a custom of having the trees inspected every 6 months, there does not appear to have been any written practice as to the regular inspection of any trees, including the African Mahogany Trees.
28. Sister Helen Little gave evidence, which was significantly supported and in keeping with the evidence subsequently given by Mr Gooch, as to the regularity of inspections and maintenance upon the trees, in particular the African Mahogany Trees. Sister Helen gave evidence that she was significantly guided by the recommendations given to her by Mr Gooch who was, and remains, a person that she trusted and believed entirely capable of conducting the work required of him as groundsman. Sister Helen stated that the inspections and maintenance occurred every six months and that she believed that this was necessary to ensure the safety of those trees.
29. It is noteworthy however that Sister Helen indicated that her main concerns about the African Mahogany Trees were not in relation to the branches, and or any risk presented by them, but in relation to the roots. Sister Helen advised that there was no changeover between her and Mr O'Brien and she therefore did not personally advise Mr O'Brien as to the scheme of arrangement that she had put in place.
30. Sister Helen indicated that finances were never a consideration for her in relation to the trees and that if Mr Gooch told her that there was work required, she would always ensure that the work was done, and then consider where the money would come from later. It is clear that Sister

Helen always prioritized the safety of the students ahead of any monetary considerations.

31. Following Sister Helen's departure from the school, Mr Anthony O'Brien was the Principal from the beginning of 2003 until June 2006. Mr O'Brien gave evidence that during his time at the school there was major tree lopping maintenance, which occurred in the last term break of the school year, ie. in or about the September/October of 2003. There was evidence before this inquest of a payment having been made by the school for tree pruning in or about October 2003.
32. Mr O'Brien gave a statement, which is in evidence before me, that there was "never any set guideline on garden maintenance or any procedures". Mr O'Brien stated that the "usual business practice" was for the groundsman to inspect, and if lopping or specific maintenance was required, then that would be sought and funding allocated. Mr O'Brien stated in evidence that his previous experience was that tree pruning took place every 2 to 3 years, and he took that as a model to work from.
33. There was evidence before the inquest that works were carried out by way of tree maintenance at the school in or about March 2004. This is described in the invoice for the work as pruning "Tamarind Tree, dead wood Black Wattle, remove Albezia Tree, remove Ironwood Tree, prune Mango". "Darwin Tree Services" carried out this work.
34. Further, there was an invoice tendered before this inquest from "Darwin Tree Services" for removal of "large Ficus Tree" in July 2004. Again "Darwin Tree Services" attended and invoiced the school for removal of "Black Wattle Tree and 2 Mango Trees" in or about November 2004.
35. There is no record of any tree maintenance occurring in the year 2005. However in or about March 2006 Darwin Tree Services attended and invoiced the school for removal of "Dead Mahogany limbs". It is clear, on

the evidence that was given before me, that the removal of that limb was from an African Mahogany Tree, which was located at the far side of the school, behind the church, and had nothing whatsoever to do with the tree involved in Aidan's death.

36. Somewhat prophetically perhaps, a call for quotes was issued in July 2006 for having the African Mahogany Trees removed at the school. Several persons provided quotes for that work which included "removing to the stump" the African Mahogany Trees in the courtyard area. That would have included the relevant African Mahogany tree involved in the death of Aidan. Several persons provided quotes for that work, however unfortunately it was not carried out prior to Aidan's death. It does not appear that at any stage in the giving of those quotations that anybody who provided a quotation to the school indicated any immediate danger associated with the African Mahogany Trees, nor specifically the one involved in Aidan's death. This is not surprising however given they were all quoting for their removal.
37. Anthony Gooch also gave evidence at this inquest. Mr Gooch was the groundsman at the school from in or about 1997 until approximately May 2006. Mr Gooch gave evidence that during his time as groundsman, the Principals were Sister Helen Little and Anthony O'Brien.
38. Mr Gooch gave evidence that as the groundsman he was employed by the school and answerable directly to the school Principal. Mr Gooch gave a statement, which is in evidence before me, that he did not have a specific job profile but his day to day duties included everything from opening the school gates in the morning, emptying the bins, to keeping up with the lawns and gardens. He stated that in relation to the gardening aspect of his job he had no formal training but would mow the lawns and do general type jobs with the garden beds, watering and the like. He stated he never had a job specification to inspect the school grounds or trees, however if something

looked dead, dangerous or needing attention, he would refer the matter to the Principal.

39. During the time that Sister Helen was the Principal, Mr Gooch was left predominantly responsible for the trees. It appears from the evidence that there was a strong and close working relationship between Sister Helen and Mr Gooch. Mr Gooch gave evidence that when Sister Helen was the Principal he understood his duties in relation to the trees at the school were just to make sure that they were safe and maintained properly, and that it was up to his discretion as to when a tree surgeon or arborist would come in and ensure that the trees were cut back properly or that any dangerous limbs were removed.
40. When Mr O'Brien was the Principal, Mr Gooch's statement is that he was directed most times each day as to what jobs needed doing, with Mr O'Brien telling him either in passing, leaving him a list, or calling him on his mobile. It appears from the evidence that there was a significant change in the once previous strong close working relationship that existed between the principal and grounds person once Mr O'Brien took over the role as principal.
41. Mr Gooch gave evidence that when Mr O'Brien started as Principal everything had to go back to him. Mr Gooch stated in evidence that if he wanted any tree work done, he was required, under Principal O'Brien, to refer it back to him and that Mr O'Brien would then decide whether it was appropriate for that work to be undertaken or not.
42. It is clear on the evidence before me that there was a poor working relationship between Mr Gooch and Mr O'Brien. Mr Gooch gave evidence that after numerous requests made of him by Mr O'Brien to make clear what his duties were, Mr Gooch in fact prepared an outline of what he understood his duties were and then requested that the principal tell him what he was,

and was not, responsible for doing. Unfortunately it appears that there was no discussion of this document between Mr Gooch and Mr O'Brien.

43. It appears that Mr Gooch's duties went from basically being predominantly responsible himself for ensuring all works were carried out during the administration of Sister Helen; to answerable to the principal day by day and awaiting his direction as to what sort of things were to be done around the school during the administration of Mr O'Brien. This clearly contributed to Mr Gooch's decision to leave the school.
44. Mr Gooch gave evidence that when Sister Helen was the Principal; tree-logging inspections were carried out on average every 6 months. He stated that the logging company would identify the trees requiring attention, identify what needed to be done, and then that information would be passed on to Sister Helen who would always agree to the works being carried out.
45. Mr Gooch gave evidence that this changed upon Mr O'Brien becoming Principal and that upon his recollection a major pruning occurred only once in the 2 years he worked under Mr O'Brien. Thereafter it appears the trees were just simply cut back and trimmed occasionally. It appears that regular inspections no longer occurred during the time that Mr O'Brien was Principal of the school. Mr Gooch gave evidence that many times he would advise Mr O'Brien of work that needed to be carried out upon the trees and Mr O'Brien would tell him that there wasn't enough money because of budgetary constraints.
46. Mr Gooch gave evidence that he wrote on "at least 10 occasions" to Mr O'Brien about his concerns regarding the trees. Mr Gooch gave evidence that the letters that he would have written to Mr O'Brien should have been placed upon his personnel file. It is noted that unfortunately, despite the attempts of Counsel assisting to locate that file, the school did not provide it until day 2 of this inquest. The file that was produced did not have any such letters. I will return to this aspect of the evidence later.

47. Mr Butt was then employed as the maintenance/groundskeeper at the school from 4 July 2006 until 13 July 2007. He gave evidence that upon being employed he was tasked by a Mr Ken Byskov, Maintenance Manager for Catholic Education Office Darwin, to obtain quotes for the removal of trees, which were either damaging school plumbing and/or the buildings.
48. Coincidentally Mr Butt stated that when he first started at the school it appeared a little run down and it did not appear to him that general maintenance had been carried out for some time. He called it “grubby”. He stated that there was leaf litter and rubbish around, the lawns were unkempt and the edges had not been done. He stated that the shrubs needed pruning and that it appeared that there had not been anybody around who had done it for a while.
49. Mr Butt stated in his statement, which is in evidence before me, that he never personally checked the trees and did not know of any problems with them. Mr Butt stated the reason he did not personally check the trees was because it was never his understanding that it was part of his duties to do so, other than clearing leaves in the courtyard. He gave evidence that he was never told that it was his responsibility to identify trees that needed pruning, lopping or removal.
50. In accordance with the request from Mr Byskov, Mr Butt gave evidence that he contacted 12 companies requesting quotes. Only 5 responded. He passed those on to the Principal Mrs Honor La’Porte. Quotes from “Campbell’s Tree Services”, “Pete’s Tree Care”, “The Stump Man”, “Area Contracting Pty Ltd” and “Xtreme Garden Care” were tendered before this inquest. All quotes were for the **removal** of the trees.
51. Mr Butt gave evidence that his understanding as to the request for the tenders was to have the African Mahogany trees removed because their root system was starting to damage footing and plumbing of the buildings. Mr

Butt gave evidence that he was not aware of any particular complaint in relation to the branches of the African Mahogany Trees.

52. It is clear that there were some significant problems at the school during the time that Mr O'Brien was the principal. There was evidence before this inquiry that there was at one stage a "no confidence" motion put before the School Board in relation to Mr O'Brien. That appears to have been predominantly based on concerns in relation to health of the building, in particular bacteria in the air conditioning. It appears there were significant concerns associated with the state of the school and grounds during his tenure as Principal.
53. There was in evidence before me of the budget allocation for grounds and caretaking at the school during the years that Mr O'Brien was the Principal. It is clear from those budgets that there were allocations for grounds and caretaking at the school of \$3,000, and a further \$3,000 for contract grounds and caretaking. Mr O'Brien gave evidence before me that he did not remember those amounts as being part of his budget, however he did state that there was "regular reminding" during the time that he was Principal at the school to pay attention to the budget from the Catholic Education Office. It is clear during the time that Mr O'Brien was Principal that he was receiving regular reminders and influence from the Catholic Education Office to work within the budget allocation of \$3,000 per annum for grounds and caretaking, and a similar amount for contract grounds and caretaking.
54. Greg O'Mullane, Deputy Director of School Services for Catholic Education, also gave evidence at the inquest. Mr O'Mullane stated that Catholic School Services offered support to Catholic Schools throughout the Northern Territory. Mr O'Mullane stated that the individual Principal of each school had control over their school, but were offered support and guidance from Catholic Education, for example in ensuring the schools met

certain curriculum and funding for each of the schools. Mr O’Mullane had also been a school principal in the past.

55. Mr O’Mullane gave a statutory declaration, which is in evidence before me, that although the funding came from School Services of the Catholic Education Office, it was the responsibility of each individual school to determine their budget requirements and how much of their budget was apportioned to each area. Mr O’Mullane stated in evidence that the person to determine if maintenance had to be done was the school Principal.
56. Mr O’Mullane gave evidence that the Catholic Education Office gave directions to schools that anything that was a serious occupational health and safety issue would have to be prioritized in terms of budget allocations. Mr O’Mullane stated that anything that would cause a possible danger for anyone operating in the school was something that would need to be considered as a serious occupational health and safety issue, but it was clear from the evidence of Mr O’Mullane that in order to go outside their budget allocation there would need to be the potential of a “serious accident” before the school would be allowed to go outside this allocation.
57. Mr O’Mullane stated in his statutory declaration that as far as he was aware there was no standard job specification for the grounds person and it was whatever was negotiated at the individual school. Mr O’Mullane gave evidence that the schools were the ones to determine when they would have somebody come in to inspect the trees to determine whether they should be cut, and that it was not expected that the maintenance persons would be the person climbing trees and carrying out such work. Mr O’Mullane admitted that it was not a direction of the Catholic Education Office, prior to the death of Aidan, that qualified arborists were the persons to carry out regular inspections of the trees.

58. Mr O’Mullane stated that all schools had a budget that they should endeavour to keep to. Contrary to the evidence of Mr O’Brien, Mr O’Mullane stated that there were not regular reminders sent to the schools about their budgets, however all Principals were aware that they needed to keep within their budget.
59. Mr O’Mullane had also been a school Principal and stated that he had not received any advice, education or information from the Catholic Education Office as to how regularly trees should be looked at by experts, nor did he receive any advice, education or information in relation to the appropriateness or otherwise of certain types of trees in school yards during his time as a school Principal, nor the appropriate qualifications of persons to be brought in to look at school trees. Mr O’Mullane, during his evidence, was also clear that there was no direction, prior to Aidan’s death, by the Catholic Education Office to the schools as to how regularly the trees in the schools should be appraised by experts.

History of Tree Maintenance of the African Mahogany Trees at the School

60. Mr Rodney Anderson, owner and manager of the business known as “Darwin Tree Services”, gave evidence before this inquest. Mr Anderson has been the owner and operator of “Darwin Tree Services” since March 2000, having been in the tree lopping industry since approximately 1997. He has qualifications in Chainsaw Certificates, Aerial Rescue Access to trees by crane, removal of trees in confined spaces, and is qualified rigger and dog man for work conducted in close proximity to power lines. Mr Anderson has also undertaken parts of a degree to become an arborist, although he isn’t qualified as such.
61. It was clear from the evidence before this inquest that the business known as “Darwin Tree Services” had carried out work upon the trees at St Mary’s School on a number of occasions. There were invoices before this inquest from “Darwin Tree Services” since 2003. It appears on the evidence that it

was in fact “Darwin Tree Services” that carried out the last most significant work upon the African Mahogany Trees in the courtyard area at St Mary’s School.

62. Mr Anderson gave evidence before this inquest that at the time of that work being conducted, in about October 2003, he had retained the services of a Mr Lachlan Smith. Mr Anderson gave evidence that Mr Smith had shown him qualifications indicating to Mr Anderson that he was a qualified arborist. Mr Anderson accepted those qualifications. Unfortunately Mr Anderson did not keep a copy of that information. Despite endeavours to do so, the only qualifications that were able to be located by Counsel assisting for the purpose of this inquest were qualifications simply indicating that Mr Smith had only qualified with a Certificate 2 and therefore was only qualified for carrying out work under supervision.
63. Mr Anderson gave a statutory declaration that is also in evidence that there was an Australian Standard by which work needed to be carried out, and that it was his understanding that the significant work carried out by Mr Smith back in 2003 had been carried out to that standard. It is questionable as to whether this was the case given that it appears unlikely that Mr Smith was appropriately qualified according to the records discovered to this inquest.
64. There was also evidence before this inquest that in 2004 work was carried out by “Darwin Tree Services” in March, July and November. There does not appear to be any significant work that was carried out by “Darwin Tree Services” at that time upon the relevant African Mahogany Trees. It therefore appears that no significant work had been done upon the trees since 2003.

History of African Mahogany Trees as a species in Darwin and requirements for their maintenance

65. David Griffiths, Curator of the Darwin Botanical Gardens, also gave evidence at the inquest. Mr Griffiths has been employed as the Curator of the Darwin Botanical Gardens for the last 10 years. Mr Griffiths gave a statutory declaration, which is in evidence before this inquest, as to the planting of African Mahogany Trees in Darwin. It states that in or about the 1950's the Commonwealth Government planted a large number of trees everywhere around Darwin, particularly including the African Mahogany Trees. With the event of Cyclone Tracey in 1974 this occurred once again as 80 to 90% of all vegetation had been destroyed. Mr Griffiths gave evidence that as a result, the African Mahogany Tree was an extremely popular tree during that period because it was "quick growing, tall and had a very shady crown". There were therefore a very large number of them planted in and around Darwin.
66. Mr Griffiths' statement however identified that there were particular problems with the African Mahogany Trees for the following reasons:
- (i) The canopy becomes top heavy;
 - (ii) They have a shallow root system and, because Darwin is basically on a rock shelf, the soil is very shallow with the topsoil in Darwin on average being approximately 0.5 meters at the most;
 - (iii) In the wet season the soil becomes loose and saturated and the trees often fall over due to no anchor points being in place for their roots.
67. Mr Griffiths' statutory declaration sets out that in his own personal opinion the African Mahogany Trees should never have been planted in populated urban areas in Darwin because of their particular problems. Mr Griffiths identified that a further problem associated with the African Mahogany Tree was that it was susceptible to failure due to poor maintenance and care by

humans. Mr Griffiths noted that during times of the dry season, if the African Mahogany Tree was short on water, they could basically shut down water supply to different limbs. If that limb were shut down, and the limb were large and top heavy, the limb could fail and fall at any time.

68. Mr Griffiths stated in his statutory declaration that if this did occur, the limbs could still appear to be physically fine, but then just fall off with no signs of the risk occurring. Mr Griffiths identified such an occurrence in the Botanical Gardens in late September 2006 (after Aidan's death) where a large limb from an African Mahogany Tree fell in the car park and crashed down onto another limb, with both limbs falling to the ground. The length of the two limbs was 4 meters each with a girth of 8 to 12 inches. Fortunately no one was injured as a result of that occurrence.
69. Mr Griffiths gave evidence that, in his experience as the curator at the Botanical Gardens for the last 10 years, the risks associated with African Mahogany Trees could be reduced by regular maintenance and regular inspection of at least once every 12 months by a qualified arborist.

Types of Maintenance and Supervision carried out by other Agencies

70. Mr Michael Lowell, Capital Works Coordinator of Parks Department of the Darwin City Council, also gave evidence before this inquest. Mr Lowell stated that he had been employed, back in October 2006, as a Parks Manager of the Darwin City Council (DCC). Part of his duties included overseeing the daily operation and performance of the Parks Department for the DCC.
71. Mr Lowell stated that there was a set regime for monthly tree inspections of all trees in all public council areas. He stated that precinct staff carried out those inspections. During those inspections the staff were required to look for overhanging branches and nearby dead trees. The things required to be considered and looked at during the time of such tree inspections are attached to the statutory declaration of Mr Lowell, which is also in evidence before me.

72. In addition to those inspections Mr Lowell gave evidence that there were also quarterly tree inspections that were undertaken every 3 months by a senior Arborist or “Urban Forest Management” (UFM) team leader. Mr Lowell gave evidence that the UFM team leaders were also qualified arborists. Mr Lowell stated that the reason qualified arborists were used to undertake the 3 monthly checks was because of their skills in tree management and maintenance. Mr Lowell gave evidence that those inspections were predominantly involving the arborists to look up at the trees.
73. In his statutory declaration Mr Lowell stated that those inspections occurred upon large trees in high vehicle or pedestrian traffic areas such as malls, pools and child care centres. During those inspections, specific issues to be inspected were dead wood, external evidence of structural fault, tree health/vigour and any presence of pests or disease.
74. Mr Lowell also set out in his statement that there was an annual suburban nature strip pruning process to clear vegetation from pedestrian thoroughfares and vehicle corridors on all nature strips throughout the municipality of Darwin. Mr Lowell set out in his statement that this was performed by contractors, with each nature strip being visited annually, and with the scope of work including inspections of each tree as they pass and listing of trees that are identified as potentially hazardous, with that list then being forwarded to a senior Arborist for inspection.
75. Mr Lowell also set out in his statement that it was a requirement that all staff carry out informal inspections throughout their usual working day and if there were any concerns these were to be identified. Mr Lowell set out that the persons specifically directed to carry out these informal inspections were park staff, Darwin City Council staff in other sections, managers of Child Care Centres and Pool Managers.

76. Mr Lowell also provided a list, attached to his statement, as to the recommended types of trees for grounds and provided a list that had been recently prepared for the Lyons Sub-Division. Needless to say, African Mahogany Trees do not form part of that list.
77. Ms Leanne Taylor, Director of Infrastructure Services for the Department of Employment, Education and Training (DEET) for the Northern Territory Government, also gave evidence. Ms Taylor provided a statutory declaration to police which set out the arrangements in place for public schools across the NT concerning maintenance. Attached to that statutory declaration is a document entitled “Occupational Health and Safety Monthly Self-Inspection Checklist – Playgrounds”.
78. Ms Taylor gave evidence that this checklist was provided to each public school in the Northern Territory. Ms Taylor stated that the responsibility for carrying out those inspections lay with the Principal of each school or their delegate. That checklist specifically set out requirements in relation to the plants, including information as to suitable plant species. One of the requirements of the checklist was to check that the “grounds were free of dead trees or dead overhanging branches”.
79. Ms Taylor gave evidence that if, upon the monthly self inspection in the yard, there was discovered a matter of concern, then an external person with appropriate qualifications was required to be retained to carry out the relevant inspection. Ms Taylor gave evidence that DEET required schools to appoint arborists by qualification for the purposes of inspections of trees for removal. This system was in place prior to the death of Aidan Bott in public schools across the Northern Territory.

Expert Evidence

80. Mr William (“Bill”) Sullivan gave expert evidence before this inquest. He holds an Advanced Diploma, level 6, in Horticulture and Tropical Arboriculture from the Charles Darwin University. He is a professional member of the International Society of Arboriculture. He was accepted before this inquest as a person appropriately qualified to give evidence as an expert. Mr Sullivan also owns and operates a company known as “Sully Pty Ltd” which trades as “The Stump Man”. He has operated that business for over 12 years in Darwin.
81. Mr Sullivan gave evidence that in the course of his work in Darwin a large majority of his work involves African Mahogany Trees, as they are a predominant large tree in Darwin. Mr Sullivan pointed out that the African Mahogany Tree is not actually a Mahogany at all, but is colloquially known as the “African Mahogany Tree”. Mr Sullivan gave evidence that the African Mahogany Tree is in fact from the “Khaya” family of which there are 5 species, however only 4 exist in Darwin. The tree involved in the death of Aidan was a species known as the “Khaya Senegalensis”.
82. Mr Sullivan also provided a statutory declaration to the police, which is in evidence before me. That statement sets out the reasons for the popularity of the African Mahogany Tree in Darwin and the particular difficulties associated with those trees.
83. Importantly Mr Sullivan was the individual who attended the St Mary’s School the day after Aidan Bott was struck, and was the person to actually physically remove the tree. Mr Sullivan gave specific evidence before this inquest, which I will return to later, as to the health of the tree involved in Aidan’s death.
84. Mr Sullivan gave evidence that the pruning of the tree impacted “absolutely” upon the tree itself. Mr Sullivan gave evidence, unsurprisingly it may be said, that good pruning improved the health of a tree, and that such pruning

should be in accordance with the Australian Standard. Mr Sullivan stated that the regularity of such pruning depends on a lot of things but in Darwin, with the climate that we have, all trees (not just African Mahogany Trees) should be inspected prior to the wet season and after the wet season, to determine if any remedial work is required to be carried out.

85. Mr Sullivan gave evidence that in the last 12 months he has been responsible, on behalf of the Darwin City Council (DCC), for pruning in excess of 60 of the largest trees in Darwin in public spaces. That pruning is carried out in accordance with requests by the DCC. Of the “60 odd” trees that Mr Sullivan has been responsible for pruning, only 1 broken limb has occurred in that time, which was during the winds associated with this current wet season and particularly Cyclone Helen.
86. Mr Sullivan stated that the African Mahogany Tree as a species was no more dangerous than any other sort of tree, however it required regular maintenance and regular management to reduce its risk.
87. Relevantly, Mr Sullivan gave evidence that the health of the tree involved in Aidan’s death was “very poor, extremely brittle”, which was “unusual for a healthy Mahogany tree”. Mr Sullivan stated that the wood fibres in an African Mahogany Tree in Darwin were extremely elastic, however this tree had no elasticity left in it in most places. He stated that whilst cutting the tree, a large branch, 8 inches in diameter, had snapped. He stated that this branch was a green, or live, branch and that this occurrence was “entirely unusual”. Mr Sullivan stated that the tree involved in Aidan’s death was a very dangerous tree to take down.
88. In Mr Sullivan’s opinion, the contributors to the state of health of the tree were a lack of transpiration and osmosis. He stated that the tree had hard landscaping up to approximately a meter high around it. This was the border around the tree. He stated that the area was also paved, which meant that the roots were enclosed and oxygen was gone. Mr Sullivan gave

evidence that the tree could not uptake water or nutrients and accordingly, the first thing that happened was the tops of the tree died. Mr Sullivan stated that there were a number of dead branches in that tree that could have fallen at any time. Mr Sullivan stated that the factors that contributed to the branch falling from the tree, and to Aidan's death, was "lack of maintenance and lack of management".

FINDINGS

89. There is no doubt that the death of 9-year-old Aidan Bott was a tragedy. A little boy went to school one day and did not return. The family is, of course, rightfully upset and distressed at this tragedy, so too is the entire community. In my view, this distress has been compounded by the manner in which the legal representative of the school and the Catholic education Office were initially instructed to conduct the case. Initially the school and the Catholic Education Office, through their representatives, went to some length to persuade me that they had no relevant knowledge as to the risks posed by the tree in the school yard.
90. It was suggested that evidence from the former groundsman viz Mr Gooch that the School had knowledge of the risk of the tree was untrue. Having regard to evidence provided late in the Inquiry (exhibit 12), I find it unfortunate that it was put to Mr Gooch that he was a liar. I have no doubt that the school and the Catholic Education Office did have knowledge about the risks posed by not regularly pruning the tree. I do not consider that Mr Gooch lied to this inquest. I consider him to have been a witness who was attempting at all times to give a truthful account when giving his evidence.
91. Although I can make no finding as to the number of letters, Mr Gooch in fact wrote to the school principal, I find that he did in fact warn the school of the dangers associated with the African Mahogany Trees and those warnings went unheeded. I find that Mr Gooch was telling me the truth in his evidence about having warned the school of his concerns associated with

the trees, and in particular associated with the regularity of maintenance of those trees. I find Mr Gooch was a credible witness, however as with every persons memory, particularly with the passing of time, I find that he may have exaggerated the number of times that he warned the school. However I do find that he did in fact warn the school of the dangers of the trees. Mr Gooch's evidence was in stark contrast to that of Mr Tony O'Brien

92. It is clear, on the evidence before me, that on the day that Aidan sat out in the courtyard on 22 August 2006, it was an ordinary dry season day with ordinary dry season weather conditions. Unfortunately Aidan had sat down in an area where the trees had not been inspected for a considerable period of time. I find that on the evidence before me the trees in the courtyard had not had any work conducted upon them since October 2003, in accordance with the invoice dated 7 October 2003. That is some 34 months prior to Aidan being struck by the branch that fell from the relevant African Mahogany Tree.
93. I find that this was a dangerously lengthy period to have left such large trees alone without any inspection whatsoever. As Mr Lowell stated in his evidence before me, that given the area of the size of the courtyard at St Mary's School, and the traffic to be expected in that area, there was a requirement for there to be "fairly strong vigilance" maintained on the condition of the trees in that area and that the potential for a dangerous situation to arise was "extremely high" if there were no such regular maintenance and inspection.
94. I find that the only time that there was regular maintenance and inspection being carried out was during the period within which Sister Helen Little was the Principal, and Mr Tony Gooch was the maintenance/groundsman. I find that inspections and maintenance were occurring on a regular basis of at least every 6 months. Coincidentally this coincides with the regularity that was recommended by the expert, Mr Bill Sullivan.

95. As is clear from the evidence before me, following the departure of Sister Helen Little at the end of the school year in 2005, Mr Tony O'Brien became the Principal of St Mary's School. I do not accept Mr O'Brien's evidence before me that he did not know of the dangers of the trees and that there were no warnings given to him. Moreover, I find that Mr O'Brien's statutory declaration to the police about the death, which is in evidence before me, was misleading in relation to his knowledge of the dangers of the tree.
96. It is clear on the evidence before me, particularly contained in the financial documents that have been tendered in evidence, that St Mary's School and the Catholic Education Office were spending (on average) approximately \$3,000, which was (on average) 7 to 8 times less than the average amount spent by public schools in the Northern Territory for ground maintenance. This is simply inadequate in the extreme. I find that the endeavours by the School and the Office to keep the cost down contributed to the increased risk of the trees at the school.
97. It is clear on the evidence before me that during the time that Sister Helen Little was the Principal, and Mr Gooch the groundsman/maintenance man, that this was the only time that the trees were being appropriately maintained and managed. Unfortunately, as stated previously, that did not continue when Mr O'Brien became the Principal. It is clear that there was no hand over between Sister Helen Little and Mr O'Brien. It is equally clear that the responsibility for that hand over rested with St Mary's School and the Catholic Education Office. They failed in ensuring that such a hand over took place. Had such a hand over occurred then perhaps Mr O'Brien would have been aware of the regularity of the maintenance and management that was previously taking place of every 6 months.
98. However it is equally clear that Mr O'Brien did not investigate of his own volition the regularity of the maintenance and management program for the

trees. The responsibility for the trees rested with him. He was therefore responsible to ascertain whether there was a relevant program. Instead he stated in evidence that he went with the previous programs that he was aware of at other schools. I find that this was simply inadequate, particularly when he had at his disposal the background knowledge and skills of Mr Gooch.

99. By the time Mrs La'Porte became acting Principal and Mr Butt became the groundsman, there had been over 30 months of lack of maintenance and management of the relevant trees. It is clear that the damage to the trees would have already occurred and the risk associated with those trees was already significantly high. Again, it is clear on the evidence before me that Mrs La'Porte put no maintenance/management program in place other than to ascertain whether the trees could be removed. Given the short 2 months that she was in place as Principal however, I do not criticize her in this regard. I also find that Mr Butt did precisely what he was employed to do in relation to those trees and that was simply to clean up the leaf litter that was left behind by the trees, and nothing else.
100. After the giving of evidence by Mr O'Brien and Mr O'Mullane, there was produced to this inquest by the Catholic Education Office two letters, which now exist as exhibit 12. That exhibit is a letter from Tony O'Brien, as Principal for St Mary's School, to Mr Bill Griffiths as Director of the Catholic Education Office dated 21 March 2006. It is clear from the contents of that letter that the School was well aware, and made the Catholic Education Office well aware, of the dangers of the trees. At page 2, at numbered paragraph 6, the letter states as follows:

“6) On Monday this week we had a large dead branch fall from the tree in the courtyard. Fortunately the children were in class at the time. This is just one of many branches that have fallen with the potential to seriously hurt someone”

101. There is also contained, within exhibit 12, the letter of response from Mr Bill Griffiths of the Catholic Education Office to Mr Tony O'Brien dated 30 March 2006. It is clear from the contents of that letter that Mr Griffiths was well aware of what had been set out in the letter from Mr O'Brien, including the risks associated with the trees.
102. That letter is also marked as having also been sent to Mr O'Mullane. It is also clear from hand written notations upon the letter from Mr O'Brien that this letter was also brought to the attention of Mr O'Mullane. Even without the aid of exhibit 12, I formed the opinion, based on the evidence of Mr Gooch, Mr Gleeson and Mr Spadaccini, that the School, and the Catholic Education Office, did in fact know about the danger of the trees. However the letters set out at exhibit 12 place beyond doubt, in my opinion, a finding that the School and the Catholic Education Office was fixed with knowledge of the dangers of the trees before the death, and did not do anything about such dangers.
103. It is to be noted that Mr O'Mullane, Mr Bill Griffiths and Mr O'Brien have endeavoured, by virtue of their most recent statutory declarations, which form exhibits 17, 18 and 19 respectively, to explain and expand the oral evidence given by Mr O'Mullane and Mr O'Brien in light of the letters set out in exhibit 12. They, inter alia, reflect the fact the other maintenance priorities were seen as more important than the problem of the trees.
104. I do not however place all responsibility for the failure to maintain safety and to prune the trees at the feet of Mr O'Brien. It is clear from the evidence given before me that the responsibility for the school rested with the Principal, however Mr O'Brien was not given any education, information or training in relation to how to properly and adequately maintain and manage the trees at the School by the Catholic Education Office.

105. It is the finding of this inquiry that had there been more regular inspections, maintenance and management carried out upon the trees, the death of Aidan may well have been avoided.
106. Unfortunately it is clear that the regular inspections and maintenance carried out during Sister Helen Little's tenure as Principal did not occur under Mr O'Brien. This was despite clear signs, with the falling of branches in the school yard as referred to in his letter exhibit 12, that Mr O'Brien knew about the dangers.
107. It is also true, and I acknowledge, that at the relevant time the School was overwhelmed with a number of other issues associated with the maintenance at the School. It is clear that they prioritised the work associated with the building itself, however not only did they prioritise that work, they did not address, at all, the issues associated with the trees.
108. Just to have simply arranged for an appropriately qualified person, such as an arborist, to come and conduct a risk assessment of the trees would have, I find, more likely than not avoided Aidan's death. However the school did not do this. Instead, it is clear, that they prioritized the building, and ignored the trees.
109. It does not appear to this inquest that the African Mahogany Tree as it is colloquially known, or the *Khaya Senegalensis*, as it is formally known, is any greater danger to the public than any other large tree. It is the finding of this inquest however, that just like any other large tree it must be regularly maintained and inspected to ensure that the dangers and any risks associated are reduced as much as is possible.
110. It appears to this inquest that the regime undertaken by the Darwin City Council and the Northern Territory Public Schools, as a whole has, for some reason, not been information shared between those sorts of agencies and private schools. That is an unfortunate thing. Issues of safety would be

issues that it is hoped could be shared between agencies for the better public good, and particularly for the safety of children. It is therefore the recommendation of this inquest that, in future, all endeavours be made that large Government agencies and local Government bodies share safety information with all schools, both public and private, to ensure the safety of students.

111. I further recommend as follows:

- (i) That there be education and advice provided by relevant agencies to school principals both public and private, as to the requirements for tree maintenance in all schools in the Northern Territory.
- (ii) That there be compulsory inspection of all trees in school yards in all schools, both public and private, in the Northern Territory at least every 6 months.
- (iii) That such inspections be conducted by qualified arborists.

112. Finally, I find that there is insufficient evidence of a crime that may have been committed in connection with the death and accordingly no report is required under section 35(3) of the Coroner's Act.

Dated this 2nd day of May 2008

GREG CAVANAGH
TERRITORY CORONER