

**UNDER**

**THE COMMISSIONS OF INQUIRY ACT 1908**

**IN THE MATTER OF**

**CANTERBURY EARTHQUAKES ROYAL COMMISSION**

Before:

The Honourable Justice M Cooper  
Judge of the High Court of New Zealand

Sir Ron Carter  
Commissioner

Associate Professor Richard Fenwick  
Commissioner

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**FURTHER SUBMISSIONS OF COUNSEL, ON BEHALF OF SRECKO (ALEC) CVETANOV, TO  
CANTERBURY EARTHQUAKES ROYAL COMMISSION  
AS TO JURISDICTION**

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**May it please the Commission:**

1. It is not proposed, here, to repeat verbatim the matters set out in the written submission of 5 December 2011; but reliance is placed on the content of that document.
2. Mr Cvetanov is grateful for this opportunity to be heard. All that he has ever sought from the Government, various agencies and other bodies, since the death of his wife, Dr Tamara Cvetanova, on 23 February 2011, is recognition of the need for a full, transparent and impartial public inquiry into all aspects of the management and control (or, we say on his behalf, the lack of management and control) of search and rescue efforts in Christchurch following the earthquake which struck at 12.51pm on 22 February 2011.
3. That earthquake led to the declaration of New Zealand's first ever national state of civil emergency; yet, it seems, that there is to be no objective scrutiny of the search and rescue efforts which both preceded and followed that declaration.
4. As a necessary aside, I stress that it is not Mr Cvetanov's intention to besmirch, impeach or blame any person for their actions or omissions over that terrible day and night. There is no doubt, in his mind, that individuals at the CTV site were acting with the very finest – indeed, the noblest – of intentions.
5. These shaky isles remain shaky, will ever be thus – Christchurch did not cure the affliction. Lessons for the future of search and rescue, of civil defence emergency management, should be found, developed and learnt.
6. That is the legacy which Mr Cvetanov wishes that the death of his wife, the mother of their two infant children, the paediatrician, will be.
7. For Dr Cvetanova died not in the failure and collapse of the CTV building on 22 February 2011. She, along with four Filipino fellow English language students, survived that failure and collapse, trapped in a space in the third floor, at worst suffering from relatively minor injuries.
8. Rather, those five women, relatively uninjured, lived on for another 12 hours or so, still trapped and unrescued, but in communication with the outside world, including with their relatives and emergency services.
9. A timeline is attached to Mr Cvetanov's statement of 16 June 2011, at pp29-30 (second schedule). It is not intended, nor is it necessary, to traverse the harrowing detail in that statement. Sufficient it is, it is submitted, to point to 7 key aspects in the timeline:
  - 9.1. 12.51pm (22 Feb) – Magnitude 6.3 earthquake;
  - 9.2. 9.39pm - first 111 call by Dr Cvetanova;
  - 9.3. 10.35pm - her first call to Mr Cvetanov;
  - 9.4. 11.00pm (22 Feb) to 1.30am (23 Feb) - various communications, in diverse ways, by a number of persons with Dr Cvetanova, her location having been identified in the CTV wreckage; including
    - (a) 12.50am (23 Feb) - some 12 hours on, last 111 call by Dr Cvetanova;

- (b) 1.13am – her last call to Mr Cvetanov;
  - (c) 1.30am – a non-earthquake induced collapse of CTV rubble; to which I add an eighth point;
10. Dr Cvetanova's body, when recovered, indicated that she had sustained significant injuries from building materials.
  11. As is stated in para. 3 of our submission of 5 December 2011, it is alleged that all five women (that is Dr Cvetanova and the four Filipino women) died as a result of inaction (initially, at least) by, and subsequent inept and/or inadequate and/or inappropriate actions of, other persons – would-be rescuers.
  12. If we are to advance the main thrust of the jurisdiction argument before this Commission, we must face the third exclusion contained in the Commission's Terms of Reference. ("But, We declare that you are not, under this Our Commission, to inquire into, determine, or report...upon...(c) the role and response of any person acting under the Civil Defence Emergency Management Act 2002, or providing any emergency or recovery services or other response, after the 22 February 2011 aftershock").
  13. In the absence of any independent, full and transparent public inquiry, as set out in para. 4 of our written submissions (and it is noted, in passing, that the Pike River Royal Commission is dealing with not only the causes of that tragedy, but also with all aspects of search and rescue following) and notwithstanding the third exclusion just referred to, it is submitted that this Commission, in due course, not only should receive all of Mr Cvetanov's evidence but, as well, investigate all the contentions and issues within it or arising from it, including receiving such further materials and evidence from other sources as you deem appropriate.
  14. It is submitted that the Commission might well conclude then, as we urge:
    - (a) that the failure of the CTV building did not cause Dr Cvetanova's death;
    - (b) that she remained alive, albeit with minor injuries caused by the CTV failure;
    - (c) that she was recoverable alive; and
    - (d) that inaction and inept and/or inadequate and/or inappropriate actions by others led to her death some 12 hours after the CTV failure.
  15. All of the matters urged above, properly it is submitted, should be seen and treated by this Commission as one of "Other incidental matters arising – (e) any other matters arising out of, or relating to, the foregoing that come to the Commission's notice in the course of its inquiries and that it considers it should investigate".
  16. The Commission is clearly entitled, it is submitted, to inquire into and consider how Dr Cvetanova was originally injured (although in a minor way) by the CTV building failure (see, e.g., Terms of Reference, "Inquiry into sample of buildings and 4 specified buildings" at (a)(ii) and (iii)(B)). It would be unusual then, it is suggested, not to go on and consider the matter which inevitably flows from that – how and why, some 12 hours after the earthquake, she was killed whilst still within that building in the same space. (And the same applies to the other 4 women.)
  17. Indeed, that the Commission should investigate and answer such questions, is, we submit, necessary if it is to be able to properly consider matters such as the performance and/or failure of the design and availability of safety features, such as

escape routes, of the CTV building (Terms of Reference a(v)(D)). Further, as to that, a concern we have is that the Commission cannot properly consider such matters in the absence of comprehensive consideration of rescue related efforts and experiences such as those of Dr Cvetanova and Mr Cvetanov.

18. In passing, one notes the use of the word "investigate" in the "Other incidental matters arising" provision. Interestingly, "investigates" does not appear in any of the other (relevant) provisions of the Terms of Reference, whether:
  - (a) in the actual appointment clause ("to inquire into and report"); or
  - (b) under the heading "Inquiry into sample of buildings and 4 specified buildings" ("inquiry", "inquired into"); or
  - (c) under the heading "Inquiry into legal and best-practice requirements"; or
  - (d) under the "Exclusions from inquiry and scope of recommendations" ("inquire into, determine, or report").
19. Therefore, it is submitted that this Commission is both able to, and should, investigate the causes of the death of Dr Cvetanova in the CTV building's wreckage, on 23 February 2011, as a matter coming to its "notice in the course of its inquiries". Again, the use of "inquiries" is noted. The main or core parts of the Terms of Reference are to be inquired into. Incidental matters, which come to the Commission's attention during the course of those core inquiries may be "investigated" by the Commission. Dr Cvetanova's death is one such matter which should be "investigated" – the Commission would not be in breach of that third exclusion, i.e. would not be "inquiring" into the death, as the word "inquiring" is used in and defined by the Terms of Reference.
20. In any event, it is submitted that, having regard to the wording of the required Recommendation (c) in the Terms of Reference ("...recommendations upon... (c) the adequacy of legal and best practice requirements for building design, construction, and maintenance insofar as those requirements apply to managing risks of building failure caused by earthquakes"), this must make it problematic, if not impossible, for the Commission to exclude evidence of certain deaths, such as Dr Cvetanova's, on the basis set out below.
21. Even a post-failure death such as hers (and whether caused by rescue operations or not) is, it is submitted, a foreseeable risk to be managed following a building failure. Recommendation (c) might be seen as requiring the Commission to consider how building design parameters should seek to maximise the potential for live rescues – thus better managing the risks of building failure.
22. Which rolls into the issues raised in para. 5.2 of the written submissions. These largely speak for themselves, and we provide an example below (refer para. 24).
23. But before turning to such matters as collapse survival zones, escape routes and the like, it is submitted that a future design requirement, relating to survivability and rescue concerns, might involve each city block within a CBD having all gas, electrical and other potentially hazardous services running and supplied through a separate self-contained building, so that all such services can be readily turned off and controlled directly by emergency rescue response agencies, as required, reducing the likelihood of fires and explosions following building failures and increasing survivability prospects.
24. As to the design and availability of building safety features, such as survival zones:

- (a) we raise the possibility of incorporation into building design, some type of solid ledges or half-height walls or islands, strategically placed on each floor to create survival zones and tunnels (the creation of voids); and
- (b) we suggest that emergency communication systems could be incorporated into such pre-designed and designated survival spaces.

Dated 5 March 2012



Nigel Hampton QC

Counsel for Mr Cvetanov