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December 21, 2017

Foamies banned

By DAVID COHEN

A Cottesloe father fears local children won't be able to learn to surf because of a council crackdown on soft-board foamies and boogie boards at Cottesloe beach.

Jayson Renouf says he and his two boys have been ordered from the surf and threatened with \$100 fines for using foamies.

"It's ridiculous," he said. "I grew up on that beach and all kids learned to surf by using foamies."

"I've been kicked out with my seven-year-old and 10-year old a couple of times when there's been no one else in the water."

Mr Renouf said rangers and council-employed lifeguards had quoted section 4.3 of Cottesloe's beach local law to him.

It says surfing is not allowed for 100m north of the groyne except between April and September.

Surfing is also prohibited at the Eric Street pool and Vera View beach.

"People have been using soft-boards unchanged on Cottesloe beach ... not fibreglass surfboards," Mr Renouf said.

"I feel strongly that a tradition is being broken here. Fathers teaching their kids to surf on local beaches."

"I am not aware of anyone ever being injured by the use of a boogie board, so to suggest it is a safety issue is quite ridiculous."

A Cottesloe council spokeswoman said a local law passed in 2012 banned surfing within the flags north of the groyne and during the summer months at Cottesloe beach.

This was stated on signs. "Anyone surfing there, with a hard or soft board, will be asked to leave the area," she said.

"Safety of families with young children is paramount."

"No one has been fined this season, and fines will not be issued if surfers stop surfing between the flags."



Surf's not up at Cott ... Jayson Renouf with his sons James, left, and Joel. Photo: Paul McGovern

Cop made false claims about Rayney - judge

By BRET CHRISTIAN

Some WA detectives have worsened the damage suffered by Lloyd Rayney by continuing to express opinions against him in court about the murder of his wife Corryn, according to Supreme Court Justice John Chaney.

Last week he awarded Mr Rayney \$600,000 against the state of WA, an amount he said was enough to publicly vindicate Mr Rayney's reputation as well as recognise the hurt and humiliation he had suffered.

This week he awarded him another \$2.02m for lost income from his legal practice.

The record payout resulted from a notorious press conference given by the detective in charge of the murder investigation, during which the judge said false statements had been made. Senior WA detectives who worked on the case sat at the back of the courtroom on Friday to hear the decision, which in total will cost WA taxpayers many millions (see page 3).

Mr Rayney's compensation was for lost earnings when clients deserted his legal practice after the police press conference



Lloyd Rayney



Jack Lee

conducted by then detective senior sergeant Jack Lee, since promoted to superintendent.

The judge was especially critical of those officers who, 10 years on, continued to express opinions about Mr Rayney's guilt despite two court acquittals - at trial and an appeal.

He singled out for criticism Mr Lee, the head of Operation Dargan, for his evidence in court earlier this year.

He said Mr Lee had made "a gratuitous attack on [Mr Rayney's] reputation and asserted a present belief in the plaintiff's guilt".

"A number of things said by DSS Lee were false," the judge said of the detective's conduct at the press conference on September 20, 2007, held in front of 35 members of the press six weeks after Mrs Rayney's body had been found buried off a

No reasonable grounds to suspect Mr Rayney

track in King's Park.

Her body was located there after police followed a trail of transmission oil from her damaged car, found abandoned in Kershaw Street, Subiaco.

The press conference had a "devastating" effect on Mr Rayney, the judge said.

He said Mr Lee had intended what he said at his press conference to be published.

The next day's edition of The West Australian had a large picture of Mr Rayney with the headline, "Prime suspect".

"DSS Lee's inaccuracies and careless choice of language were bound to increase the hurt and distress felt by Mr Rayney, and cause considerable damage to his reputation," the judge said.

At the time of the press conference there were no reasonable grounds to suspect that Mr Rayney had murdered his wife or that his conduct had led to that suspicion, the judge said.

Mr Lee's conduct of the conference had also been criticised by Mr Rayney's trial judge, Acting Justice Brian Martin.

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These suburbs are shown on the map on page 2. Extra copies are delivered to other selected riverside suburbs.

Police made false claims about Rayney

• From page 1

Mr Lee told the press conference that the murder had most likely occurred inside the Rayney home and that Mr Rayney and his daughters were at home.

Mr Rayney was the prime and only suspect, he said.

Justice Chaney said there was exceptional, intense media interest in the "dramatic developments on the day of the press conference, partly because of the prominence of Mr Rayney and Mrs Rayney, a Supreme Court registrar".

A total of 140 news reports were printed or broadcast as a result of the September 20 press conference, added to 242 between the murder on August 7 and the conference.

Mr Lee had told the assembled media that a lot of forensic evidence was starting to come back, and interviews with a lot of people as well as Mr Rayney provided basis for suspicion of location of the murder inside the house, resulting in Mr Rayney's arrest that morning as a suspect for murder.

These statements were not true, Justice Chaney said in his written decision.

As an example, forensic evidence was evidently a reference to seedpods found in Mrs Rayney's hair. But these were a possible link to the outside of the house, not the inside.

Justice Chaney said his own view of Mr Lee's statements, and those of other people, were that they carried the imputation of guilt.

He said that in the context of what Mr Lee had said, it was a small but reasonable step for ordinary observers to go from the word "suspect" to the idea: "He is guilty - but we have to



"A poison incapable of being expunged" was how Martin Bennett, Mr Rayney's defamation trial lawyer, pictured above with Mr Rayney's daughter Sarah last week, described the police press conference comments.

wait to garner some more evidence that we already have or will have after the search of his home is complete, before charging him," Justice Chaney said.

"DSS Lee's statement that 'I think we have the evidence' was a long way from the mark."

The approach by the police, and by the State of WA in defending the defamation action, was "of starting from a presumption of guilt and then looking for circumstances or conduct that might be construed as consistent with guilt".

At the defamation trial, a letter about the press conference came to light, written by the then acting commissioner for police, Chris Dawson, now the commissioner, in January 2008.

It said DSS Lee's comments

were not planned, unfortunate and regrettable. It said that because Mr Rayney was named as a suspect it did not mean WA police believed he was guilty.

Mr Dawson said his letter, to Mr Rayney's then solicitors, could be released, but it was not.

Justice Chaney's judgment said Mr Lee and detective sergeant Carlos Correia appeared anxious at the defamation trial to publicly reinforce the suggestion that Mr Rayney had been involved in the murder of his wife.

"From early in his evidence he demonstrated a tendency to cast gratuitous aspersions on Mr Rayney with non-responsive comments," the judge said of Mr Correia.

Mr Correia said in evidence

this year: "Mr Rayney has, to this day, never been excluded as the suspect in this matter."

The judge said: "I found DS Correia to have tended to place the most sinister inferences from sometimes quite neutral or equivocal facts."

He said he had no doubt that animosity between Mr Rayney and police had influenced their perspective.

Many of the witnesses called by the state had cast aspersions unsubstantiated or wrongly construed as indicative of Mr Rayney's guilt, Justice Chaney said, adding that Mr Rayney's response could be explained.

The judge's decision sets out in excruciating detail the fracturing of the extended Rayney family and the effect the press conference had on Mr Rayney and his two daughters, who were aged 10 and 13 at the time of their mother's murder.

He said Mrs Rayney's father, Ernest Da Silva, her sister Sharon Coutinho, brother-in-law Rohan Coutinho and her friends, especially Julie Porter, formed a belief very early after her disappearance that Mr Rayney had been involved in foul play and was responsible for her disappearance.

The judge said he believed they were intent on helping police prosecute and obtain a conviction of Mr Rayney.

Mr Da Silva had said he formed the view on the day his daughter's body was found that her husband had killed her.

Detective sergeant Mark McKenzie had described Ms Porter, who lived diagonally across the road from the Rayneys, as being "stridently anti-Rayney".

The judge said he did not consider reliable Ms Porter's

evidence of how Mr Rayney reacted "startled and his face went white" when she told him she had a security camera at her front door.

He said Sharon Coutinho thought Mr Rayney "had done it" soon after her sister's body had been found, because, she said, Mr Rayney would not look her in the eyes, would not leave her alone with his daughters and did not allow her to help the girls cope.

The judge said that in the early weeks there were occasions of unsupervised visits by the girls with Mrs Coutinho.

"Thereafter I am satisfied that the reduction in contact between the two families was as much the wishes of Mr Rayney's daughters

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Huge legal bills

The WA government spent \$1.3million unsuccessfully prosecuting Lloyd Rayney, alleging he murdered his wife.

The amount does not count the cost of the massive police investigation and the cost of running his trial, which cost another \$543,000.

When the state unsuccessfully appealed against the original decision by Justice Brian Martin, the cost of external lawyers was \$350,000.

The state has not revealed legal costs in defending the defamation action brought by Mr Rayney.

For the five-week trial the state shuttled leading Sydney lawyer Terence Tobin QC across Australia.

Lawyer Martin Bennett has applied for Mr Rayney's legal costs, expected to be in the millions, to be paid by the state.

Police 'need big culture change'

Ten years after Lloyd Rayney's wife was murdered, it is astonishing that some WA police officers are still trotting out their discredited opinions, says the lawyer who represented Mr Rayney at his murder trial.

"These condemnations are completely misconceived and nonsensical," David Edwardson QC said.

He said the officers' evidence as revealed in last week's defamation decision, where Mr Rayney won against the state of WA, showed there was need for massive culture change in the WA police.

Four significant court decisions had now exonerated Mr Rayney, Mr Edwardson said.

"In a state that has had so many miscarriages of justice, it is deeply troubling when police officers continue to condemn Lloyd Rayney, evidently seeking justification for their original actions, despite all the findings in his favour," he said.



Lloyd Rayney and lawyer David Edwardson QC outside court during Mr Rayney's murder trial in 2012.

"They are trying to condemn a bloke who was acquitted."

Mr Edwardson, based in Adelaide, has appeared in criminal courts in every Australian state.

"Coming to WA WA is like entering a 30-year time warp, to see that pockets

of these attitudes still exist. It's the worst in Australia by a country mile.

"Yet I have had dealings with other WA police that have been exemplary.

"When Lloyd's case came to trial there was no smoking gun, as everyone was expecting. So much of it turned out to be nonsense.

"How could anyone else have defended himself?

"Fortunately for Lloyd Rayney, he had been a senior prosecutor, the second most senior in the state.

"He had the legal nous to defend himself and put together a team and fight the might of the state of WA.

"It can't be allowed to continue that they are still trotting out these old discredited arguments against Lloyd Rayney in 2017."

Mr Edwardson said massive cultural change was needed. Both sides of politics needs to confront the fact that there were pockets with problems and to take the necessary remedial steps.

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Police made false claims about Rayney

• From page 3

as any action on his part," the judge said.

"I do not accept that Mr Da Silva's evidence goes any way towards establishing a refusal on Mr Rayney's part to allow his children contact with Mr Da Silva."

He said he was satisfied that some principal members of Operation Dargan "formed a prejudicial view of Mr Rayney very early in the investigation".

They had construed events with a suspicious bias rather than objectivity, and at least some were influenced by the beliefs of Mrs Rayney's relatives.

Another Dargan officer, detective sergeant Keith Williams, had "a tendency to draw prejudicial inferences against Mr Rayney".

"He would not acknowledge anything that might tend to cast Mr Rayney in a favourable light," the judge said.

"He tended to construe matters in a way most prejudicial to Mr Rayney, and approach his analysis of information from an assumption of guilt."

In addition, his leader DSS Mr Lee had selectively relied on any evidence consistent with his theory, and put aside those that were not.

Mr Lee had put forward to this year's court hearing 50 reasons why he was suspicious of Mr Rayney. Many were speculative and many were repeated, the judge said.

One reason Mr Lee had given for suspecting Mr Rayney was that he could not find anyone else.

Another was statistics that related to female murder victims being murdered by partners.

The judge found that Mr Rayney's refusal to be interviewed after he formed a belief that police suspected him was capable of contributing to police suspicion against him.

Mr Rayney had explained that he was aware of other cases in WA when innocent people had been wrongly convicted.

When police broke into his family home with a search warrant, he had delayed letting them in while he phoned for legal advice.

A place card found about 100m from Mrs Rayney's bush grave in King's Park could have been in her car or when someone emptied her purse on the rear floor of her car, or could have come from her car, the judge said.

Both the card and recorded intercepts on the Rayney household's home phone had not been investigated at the time



Lloyd and Corryn Rayney on a private aircraft flight.

of the September 20, 2007 press conference, and could not have contributed to suspicion against him at that time.

Mr Lee's public statements amounted to suggestions Mr Rayney had killed his wife inside the house "with his bare hands", leaving no forensic traces while behaving normally to a visitor that night and at work the next day.

The judge said the timing

of people coming and going from the family home raised significant questions about the opportunities Mr Rayney would have had to kill Mrs Rayney.

In assessing damages, Justice Chaney quoted a long list of horrific instances of public abuse suffered by Mr Rayney after the September 20 press conference at which he was described as the prime and only suspect.

When Mr Rayney had first heard what Jack Lee had said he felt sick, distressed and scared.

He believed that when the public saw or read the content of the press conference "his life, and that of his daughters, would never be the same".

He was right, the judge said. People who had supported him now avoided him. The day after the press conference a taxi driver listening to a radio report about the murder had said: "Aah, the husband did it."

He had been shunned by parents at his daughters' school function and sporting events, and by clients of his legal practice who withdrew their cases. Complete strangers verbally abused him. A woman "gave him a look of absolute horror", people in public places swore at him and told him they knew he had killed his wife.

A man followed him across a city road and said the word "murderer" slowly and deliberately. Others shouted the word in his ear. Another said: "You're that lawyer who murdered his wife?"

Shannon disputes report

Cambridge mayor Keri Shannon says the possibility of developing a council-owned lot next to Empire Village in City Beach was not the reason she voted to rip up a carpark on the site.

In last week's POST, former deputy mayor Pauline O'Connor said she had lobbied to keep the lot as parking to handle shopping centre overflow.

"But the administration and Keri Shannon said the land was too valuable, and we could build on it," Ms O'Connor said.

This week, Ms Shannon said

A car-load of young people pulled up outside his home while he and his daughters were home, alighted and shouted "murderer" and "killer".

Another man said loudly while other people were around: "He's the one who killed his wife. Killed her in King's Park."

In a Cottesloe shop, an elderly man said loudly "That's Rayney ... murdered his wife", causing Mr Rayney to leave the shop.

The judge said the many such actual incidents demonstrated "the extraordinary level of odium and contempt felt towards Mr Rayney."

He added: "The effect of defamation surfaced regularly and forcefully."

In setting damages, the judge said the abuse continued after Mr Rayney was acquitted.

A significant component of the public were sceptical about his acquittal and the upholding of that acquittal on appeal.

He had not been vindicated despite the outcome of the trial, shown by factors such as the continued assertion by Mr Lee and Mr Correia in their evidence and ongoing suspicion of Mr Rayney.

In setting the \$600,000 damages for non-economic loss, Justice Chaney took into account the continued damage to Mr Rayney's reputation until 2016.

But in setting the loss to his income, he dated the loss from the 2007 press conference until Mr Rayney's arrest for murder in December 2010.

He also considered two other libel suits taken by Mr Rayney, against author Estelle Blackburn and her publisher, plus police forensic officer Mark Reynolds.

The Blackburn case was settled with a payment to Mr Rayney and the Reynolds case was still pending, he said.

Mr Rayney had also issued a notice of concern to Mr and Mrs Coutinho over comments they made to the media after Mr Rayney's acquittal. The Coutinhos paid more than \$6000 of Mr Rayney's legal costs to settle that matter.

The judge said Mr Rayney's income in the year before his wife's murder in 2007 was \$428,000. To the end of June 2009 it was \$2717.

she had never said that.

"I have never said to Pauline O'Connor that I wanted to build on the town's land that was regenerated," she said.

"It is absolutely untrue."

A staff report to a May 23 council meeting said the lots needed to be "retained unencumbered".

"Potential still exists for development ... and space may be needed to facilitate access and parking for these developments," the report read.

Councillors voted 7-2 at that meeting to replace parking bays on the lot with grass.

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Next edition for classifieds will be January 6, 2018

Rocky Bay plan

• From page 5

"Therefore the council resolution is important to the decision-making process.

"Why are councillors at Mosman Park not supporting us in a residential area?"

Ms Poezyn said any resident and/or councillor, could represent themselves at the DAP meeting on January 8."

The council had already asked for an extension of time, which was granted at the last minute, because Rocky Bay had not supplied the requested information.

But she said the DAP was not prepared to grant a further extension.

Mayor Brett Pollock said he had found the process quite strange.

"We couldn't really make a definite answer until we actually got the information, which we have now got back and that's why this is being finalised at such a late stage," he said.

Deputy mayor Zenda Johnson said the previous DAP recommendation for the redevelopment of the Coles shopping centre had been brought before councillors, and asked whether a further extension of time could be sought because the Rocky Bay issue was so contentious.

"I hear exactly what the residents are saying and this is an important issue that the responsible authority report should to come before council so we know where we stand on it," she said.

Ms Johnson said Rocky Bay's delay in providing information should be enough reason to request an extension.

"The information that is in front of us now is adding up to pretty much 90% of what we are actually sending," Ms Poezyn said, adding that another email request for more information had been sent to Rocky Bay that night.

"The DAP process doesn't require a council decision and therefore it is not a basis for which you can ask an extension," she said, reiterating that residents would have the opportunity to address the DAP meeting.

• From page 9

added to the lakes quickly took on the composition of the original lake water.

Laboratory tests he conducted indicated that nutrient concentrations in lake water were controlled by the lakebed.

At Perry Lakes, he says the lake beds are a healthy 2m thick.

"There's no issue of water quality," Mr Carbon said.

"The lakebeds will manage that."

The same study found that water levels could be maintained up to 1m above the surrounding groundwater table by adding water at a rate of 10mm to 30mm a day.

Mr Carbon said the only decision to make was where to get the extra water.

Another former CSIRO hydrologist, Don McFarlane, has advocated introducing treated wastewater through underground infiltration galleries from the Subiaco treatment plant.

Mr Carbon said he believed the wastewater plan could work, but that Cambridge would have a difficult time securing the rights to the wastewater.

"If there's treated wastewater available, I know a lot of people in the queue to use it," Mr Carbon said.

"The infiltration galleries would need a lot more water to raise the general water table around the lakes in such porous soils, whereas direct filling of the lakes would make use of the lower porosity of the lakebeds," he said.

"I understand that Cambridge is

looking at the option of overflow water from Herdsman Lake, which is pretty appealing."

The Herdsman main drain goes underground at Newman College, and would require a nearly 2km-long pipe to divert it to Perry Lakes.

"If they've got a mechanism to get Herdsman water into Perry Lakes, then there is a lot of information available to help them make decisions soon," Mr Carbon said.

Councillors will next discuss the Perry Lakes study at a meeting in February.

The project they advertised for tender was to investigate the benefits and feasibility of topping up the lakes, prepare detailed schematics and investigate the surety of possible water sources.