

COMMISSION OF INQUIRY INTO POLICE CONDUCT

HEARING

24 MAY 2004, 10AM

Mary Scholtens QC, Counsel Assisting the Commission
Kieran Raftery, Counsel Assisting the Commission
Kristy McDonald QC, for the New Zealand Police
David Boldt, for the New Zealand Police
John Upton QC, for the Police Complaints Authority
Susan Hughes, for the New Zealand Police Association
Mr Cooper and Mr Mears – for the Police Managers' Guild

RULING OF THE COMMISSION

DATED 28 MAY 2004

- 1 At the conclusion of Monday's public hearing, we indicated that we would meet with all counsel in Chambers on Tuesday 25 May to discuss future progress and timetabling.
- 2 That hearing took place, as did a subsequent hearing with some of the lawyers on Thursday 27 May.
- 3 As has been obvious from the commencement of this process, there are substantial difficulties in ensuring that the thorough, rigorous and comprehensive inquiry which our Terms of Reference mandate, are progressed without unfairly or unreasonably jeopardising the rights of any individuals.
- 4 The timeframe for our work was always acknowledged to be extraordinarily short, but we remain mindful of the fact that there was a public concern that led to an expectation of an early response and we are determined to ensure that any

deviation from our reporting date is only contemplated if it is absolutely unavoidable.

- 5 The Commission has had a number of oral historians meeting with people who consider they have a grievance falling within our Terms of Reference. This process has been adopted to ensure that those with a story to tell can do so in an unrestrained and uninhibited way, but without compromising their rights to control whether they wish to become formally involved in the evidential processes of the Commission if what they had to say could be legally relevant.
- 6 The Commissioners themselves have had no involvement in this process or access to the material that it has produced.
- 7 Although there is still substantial work to be undertaken in this phase, there are now some stories available which enable counsel assisting the Commission to make a preliminary assessment and to signal what other evidential material may be required to enable hearings to take place with regard to specified incidents.
- 8 In recent times requests have been made to the Police in respect of relevant files. These also need to be referred to the Police Complaints Authority. There was some delay while an amendment to the Police Complaints Authority Act 1989 was considered by Parliament after serious issues arose about the confidentiality provisions of the 1989 Act.
- 9 We are advised that both the Police and the Police Complaints Authority have an absolute commitment to ensuring that information requested is provided in the most timely way possible, but we are reminded on all sides that, even with the best will in the world, there needs to be careful response and investigation in respect of any request received and appropriate management of initial contacts.
- 10 It will be necessary to allow sufficient time for people, whose acts or omissions are complained of, to have the opportunity to respond and to have their responses assessed for evidential value.
- 11 We are frequently reminded of the problems in respect of funding for those people that has the potential to slow things down. We note again that we do not have a budgetary allocation that enables the Commission to respond in that arena. It is

worth noting that the funding arrangements currently available are not dissimilar to those that applied before the Royal Commission into the New South Wales Police Service in the 1990's.

- 12 All counsel for parties are fully aware of the urgency that the Commissioners consider attaches to our task and all have consistently expressed a willingness to co-operate.
- 13 We have been persuaded that it is unrealistic, if not impossible, to actually hear evidence relating to any incidents which are within our Terms of Reference in the month of June 2004. We have reached that conclusion with a degree of reluctance but in the firm conviction that, even with full co-operation on everybody's part, it will not be possible to have all the evidence about any specific instances investigated, assessed and briefed for presentation at a public hearing in that month.
- 14 We repeat that we are convinced that the interests of justice and equity require that we should not embark on any public hearing with regard to any alleged incident unless we can hear all versions and facets of it. We cannot receive piecemeal some of the story at one time and then return to an incident at a later stage.
- 15 Accordingly we are satisfied that we must leave counsel pursuing preparation and preliminary work during June. We have scheduled a further chambers hearing for Wednesday 16 June at 2pm when we will review their progress and reach a determination as to what can be done in July.
- 16 An issue has arisen relating to all witnesses who will be called to give evidence before the Commission. As the amendment to the Police Complaints Authority Act clearly demonstrated, there is major sensitivity about issues of confidentiality in our work.
- 17 We remain of the view that the starting point is that our hearings should, where possible, be in public and subject to media scrutiny. However, the rights of individuals must be respected. The fact that total confidentiality has been a

hallmark of police complaints procedures in the past must be given proper and substantial weight.

- 18 Consequently, we direct that the identity of any person who it is proposed will give evidence before the Commission shall, unless they specifically and unequivocally waive that right themselves, be confidential until they have first appeared before the Commission and had the opportunity to seek orders prohibiting publication of any aspects of their identity or evidence. We recognise that their rights in this regard could be irretrievably subverted if there was any publication of details that identify them before they have an opportunity to make an application. The media in particular, and everyone in general, will understand that actions which effectively deny a potential witness the opportunity to apply for protection because of prior public identification could be contempt.
- 19 This inhibition on the public dissemination of information does not interfere with the Commission's staff, Counsel for parties before us and other persons responsible for preparing potential witnesses who might appear before the Commission, carrying out necessary work. However, care must be taken to ensure that the rights of potential witnesses are afforded full recognition in the course of those activities.

Dated at Wellington this day of May 2004.

J Bruce Robertson
for the Commissioners