

22 March 2004

Hon J B Robertson
Commission of Inquiry into Police Conduct
PO Box 5684
WELLINGTON

Dear Justice Robertson

Particulars of Terms of Reference

1. As signalled at our recent meeting, the Police seek particulars and/or clarification of aspects of the terms of reference.
2. First, I would be grateful if you would define “sexual assault”. I assume that this term is confined to criminal sexual offending, and would correspond, for example, with the definition in s 185A of the Summary Proceedings Act 1957. Please confirm that this is the case.
3. Second, what years will the Commission’s inquiries cover? The terms of reference require the Commission to inquire into various practices “in the past and now”, and to report on whether various matters “have been, and are now” handled properly. How far into the past will the Commission’s inquiry extend?
4. Third, please define “unprofessional behaviour in the context of [allegations of sexual assault]”. I assume that this phrase refers to allegations both of sexual offending itself, and of deliberate failures to investigate such allegations properly; I would be grateful if you could confirm that this is the case.
5. Fourth, please explain the phrase “other relevant localities” in paragraph 2(a). Is this term of reference confined to Police stations that handled the Garrett and Nicholas complaints, or will it require the Commission to report on practices in every centre where a relevant complaint of sexual assault has been received?
6. Fifth, will the Commission concern itself with personal conduct that is entirely lawful? In this context:
 - 6.1 Please define “sexual activity that gives cause for concern” (paragraph 2(e)). How does this differ from sexual assault? How does this differ from sexual activity that gives cause for complaint? If no person has cause for complaint, who must have “cause for concern” before the activity becomes relevant?
 - 6.2 What is meant by “the general propriety of members of the Police in respect of sexual matters”? What kind of conduct will be regarded as relevant?

- 6.3 Paragraph 4(a) requires the Commission to report on whether “applicable standards or codes of conduct in relation to personal behaviour, including sexual conduct, have been and are adequate”. What kind of personal behaviour, and what kind of sexual conduct, is in issue here?
7. It may be that further particulars will be required as the Inquiry progresses, though these will, in all probability, relate to issues that arise from specific complaints rather than the terms of reference. In any event, I trust there will be no objection to my reserving the right to seek further particulars at a later stage.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kristy P McDonald'.

Kristy P McDonald QC
Counsel for New Zealand Police