

Directions to, and Membership and Reporting Time of, Commission of Inquiry into Police Conduct

SILVIA CARTWRIGHT, Governor-General

ORDER IN COUNCIL

To all to whom this order shall come, and to:

The Honourable JAMES BRUCE ROBERTSON of Wellington, a Judge of the High Court of New Zealand; and

Dame MARGARET CLARA BAZLEY of Wellington, retired public servant:

GREETING:

WHEREAS, by Order in Council made on 18 February 2004*, you, The Honourable James Bruce Robertson and Dame Margaret Clara Bazley, were appointed to be a Commission to inquire into and report upon the conduct, procedure, and attitude of the Police in relation to allegations of sexual assault by members of the Police or by associates of the Police or by both, the extent (if any) to which unprofessional behaviour within the Police in the context of such allegations has been or is tolerated, and the manner in which such allegations have been or are investigated and handled by the Police, whether directly, or on behalf of the Police Complaints Authority:

Directions to Commission

And whereas, since the Commission was appointed,—

- (a) investigations conducted by the Police into matters that are within the Commission's terms of reference have resulted in criminal charges being laid in respect of a number of alleged offences; and
- (b) specific obligations with regard to confidentiality have been imposed on the Commission by the passing of the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 and by the undertaking that the Commission is required to give under section 32 (2B) (b) of the Police Complaints Authority Act 1988:

And whereas ongoing investigations that are being conducted by the Police into matters that are within the Commission's terms of reference may result in further criminal charges being laid:

And whereas there is a need for the Commission to continue with the inquiry but to exercise its powers and discretions—

- (a) in such a way as to avoid prejudice—
 - (i) to prosecutions; and
 - (ii) to any such ongoing investigations; and
- (b) in such a way as to ensure that the Commission is not precluded from complying with any undertaking that the Commission has given or gives under section 32 (2B) (b) of the Police Complaints Authority Act 1988:

And whereas the need for the Commission to so exercise its powers and discretions means that it is necessary that the Commission should be required—

- (a) to conduct its preliminary investigations in private and to limit its public hearings; and
- (b) to make, in its report and in any interim report, findings of a more general nature than those that were envisaged when the Commission was appointed:

And whereas it is expedient that it should be made clear that current investigations by the Police and current criminal

proceedings before the courts are not to be affected by the inquiry made by the Commission:

NOW, THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council, do, by this order,—

- (a) direct that you are not, under the Order in Council made on 18 February 2004*, to inquire into or report upon any allegations that are for the time being the subject of—
 - (i) investigation by the Police; or
 - (ii) any criminal proceeding that has been commenced under any enactment and is for the time being pending or in progress before any court; and
- (b) direct that you must—
 - (i) conduct in private your investigations into the manner in which allegations of sexual assault by members of the Police or by associates of the Police or by both have been investigated and handled by the Police; and
 - (ii) hear any responses to those allegations in private; and
- (c) direct that, subject to paragraph (d) below, you may, to the extent that you consider necessary, refer, in the course of any public hearing, to particular investigations by the Police into allegations of sexual assault that were the subject of your investigations; and
- (d) direct that, in exercising the powers conferred by paragraph (c) above, you must not give names or particulars that are likely to lead to the identification of any person who made an allegation of sexual assault or of any person alleged to have committed a sexual assault or any other criminal offence; and
- (e) direct that you must not, in your report or in any interim report or in any findings made by you, report on investigations into particular allegations of sexual assault unless—
 - (i) you consider it necessary to do so; and
 - (ii) you can do so without giving names or particulars that are likely to lead to the identification of any person who made an allegation of sexual assault or of any person alleged to have committed a sexual assault or any other criminal offence; and
- (f) direct that the paragraph that appears immediately under the heading *General provisions* in the Order in Council made on 18 February 2004* must be read subject to the directions contained in this Order in Council.

Change in membership

And whereas, by the Order in Council made on 18 February 2004*, you, The Honourable James Bruce Robertson, were appointed to be both a member and the Chairperson of the Commission.

And whereas it is expedient that you, The Honourable James Bruce Robertson, should, by reason of the demands placed on you by your responsibilities as a Judge of the High Court of New Zealand and as the President of the Law Commission, be relieved from performance of the duty imposed on you by your appointment as both a member and the chairperson of the Commission constituted by the Order in Council made on 18 February 2004*:

NOW, THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and

with the consent of the Executive Council and while continuing to repose especial trust and confidence in the integrity, learning, and ability of you, The Honourable James Bruce Robertson and Dame Margaret Clara Bazley, do, by this order,—

- (a) revoke the appointment of you, The Honourable James Bruce Robertson, as both a member and the chairperson of the Commission; and
- (b) confirm you, Dame Margaret Clara Bazley, in office as the sole member of the Commission:

And it is hereby declared that nothing in this Order in Council affects any act or thing done or decision made by the Commission or any of its members, in the exercise of its powers, before the making of this Order in Council.

Extension of time and confirmation

And whereas, by the Order in Council made on 18 February 2004*, you were required to submit, not later than 1 November 2004, your findings and opinions on the matters specified in the Order in Council made on 18 February 2004*, together with any recommendations that you thought fit to make in respect of those matters:

And whereas, by Order in Council made on 1 November 2004†, the time within which you were so required to report was extended until 28 February 2005:

And whereas, by Order in Council made on 28 February 2005‡, the time within which you were so required to report was extended until 2 May 2005:

And whereas it is expedient that the time within which the Commission established by the Order in Council made on 18 February 2004* is required to report should be further extended as hereinafter provided:

NOW THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council, do, by this order,—

- (a) extend until 3 March 2006 the time within which you, Dame Margaret Clara Bazley, are so required to report, without prejudice to the continuation of the liberty conferred upon you by the Order in Council made on 18 February 2004* to report your proceedings and recommendations from time to time if you should judge it expedient to do so; and
- (b) confirm the Order in Council made on 18 February 2004* and the Order in Council made on 1 November 2004† and the Order in Council made on 28 February 2005‡ and the Commission thereby constituted, except as modified by this order.

Given in Executive Council under the hand of Her Excellency the Governor-General this 2nd day of May 2005.

DIANE MORCOM, Clerk of the Executive Council.

**New Zealand Gazette*, 20 February 2004, page 379

†*New Zealand Gazette*, 4 November 2004, page 3587

‡*New Zealand Gazette*, 3 March 2005, page 1107