

COMMISSION OF INQUIRY INTO POLICE CONDUCT

PUBLIC HEARING HELD ON 24 MARCH 2005

Commenced at 2.15 p.m.

PRESENT

Commissioners

Justice Robertson and Dame Margaret Bazley

Counsel Assisting the Commission

Ms M Scholtens QC

Counsel for the NZ Police

Ms K McDonald QC and Mr D Boldt

Counsel for the Police Complaints Authority

Mr J Upton QC

Police Association

Mr S Feltham

Police Managers Guild

Mr R Davidson and Mr E Cooper

Commission Staff

Ms R Boyack - Executive Officer

Ms E Jeffs - Advisory Officer

Ms J Harris - Information Officer

TRANSCRIPT OF PROCEEDINGS

HON JUSTICE ROBERTSON: Can we just check who we have appearances from this afternoon. Ms Scholtens, you are still here as Counsel Assisting?

MS SCHOLTENS: I am, Sir.

MS McDONALD: I appear with Mr Boldt for the Commissioner of Police.

MR DAVIDSON: Davidson, Sir, Police Managers Guild, and assisting, Earle Cooper.

HON JUSTICE ROBERTSON: Thank you, Mr Davidson.

MR FELTHAM: Simon Feltham, Police Association.

MR UPTON: Mr Upton for the Police Complaints Authority, Sir.

HON JUSTICE ROBERTSON: Are there any other appearances that anyone wishes to have recognised? (No further appearances).

This public sitting has been scheduled in order that we might get an up-to-date report as to the sort of issues which the Commission has been alluding to for 12 months now and in respect of which there appears to have been some movement since we last met.

I think perhaps the greatest assistance would be, Ms McDonald, if you were able to advise what information is in the public arena which impinges upon or affects the work of this Commission?

MS McDONALD: Yes certainly, Sir. There have been arrests of Mr Shipton, Mr Schollum and Mr Rickards. That occurred on 16 March this year and that is in relation to the allegations of Ms Nicholas.

Mr Ogle was charged on the 6th of August last year in relation to the Kaitaia matter and I imagine, Sir,

the normal position would apply with respect of publication of the complainant's name in relation to that matter.

HON JUSTICE ROBERTSON: The statutory prohibition will apply unless it has been specifically amended in any way.

MS McDONALD: That's right and I don't understand that to have happened.

As far as I am aware, Sir, there are no other ongoing inquiries into matters which would fall within your Terms of Reference beyond some residual inquiries that relate to the Nicholas matter. Beyond that, Sir, I am not in a position to take the matter any further.

HON JUSTICE ROBERTSON: And in respect of the matters where people were arrested last week (I was not in New Zealand) but my understanding is that orders were made suppressing all information relating to charges and anything other than the names of those charged and the fact that the alleged offending in some way was connected to Ms Nicholas?

MS McDONALD: That's correct, Sir, yes.

HON JUSTICE ROBERTSON: And in respect of the situation in Northland, there are no suppression orders of any sort there?

MS McDONALD: (Nods).

HON JUSTICE ROBERTSON: Whether there are other matters in respect of which suppression orders exist, it would be a matter upon which we would need to speculate as to whether they were in any way relevant to this Commission?

MS McDONALD: Yes, I think that's correct, Sir, yes.

HON JUSTICE ROBERTSON: Thank you, Ms McDonald.

Well, I suppose that one can say that we have made

some progress in that we now are aware and have some information about some charging but the issues which have been reiterated by us from time to time continue to act as a real problem.

I note that in the ruling on the 27th of August we said:

"As against that legal backdrop, we find ourselves in the position where we can have no current assuredness as to where matters are in respect of the Police investigations or charges arising from them."

We then went on to talk about the problems which are inherent in us entering into areas which are still subject to investigation or in respect of which charges have been laid.

One of the real difficulties which we apprehend is that so long as there are suppression orders in place in criminal Courts, and so long as we do not know whether there are ongoing investigations, the caution and the concern which we have expressed in the past have not been entirely alleviated.

There does appear to have arisen in some places an apprehension that Dame Margaret and I are of the view that if some people have been charged there are no longer matters of concern to the Commission of Inquiry. Nothing could be further from the truth. The only issue which arises is whether the Commission of Inquiry can lawfully and responsibly carry out its work simultaneously with the processes of charges in the criminal Courts.

We have advanced at this stage to the position where we at least know that there are some criminal charges

which impinge upon areas which are within our Terms of Reference as well.

I would hope that we could obtain further clarity with regard to the totality of the position. We have said on a number of occasions we need to be sure that anything which we do does not have the potential to put at risk proper process and fair hearing in respect of criminal trials. There could be nothing more damaging than the actions in good faith of this Commission leading to a situation where trials were aborted or stayed because of an apprehension of contamination by reason of our activities.

We, of course, are particularly conscious of the fact that there are many people who, as a result of the setting up of this Commission, took what in many cases was a very brave step, of putting up their hands and indicating that there were outstanding grievances which they wanted to have considered. We have never lost sight of their particular plight and need.

It appears that we are moving towards the position where a degree of confidence will exist as to those areas in which there are or will be criminal charges laid and that leads to the issues of whether we can in any way look at those matters. As I apprehend what I have substantially heard from counsel, there appears to be a clear majority, if not a consensus, that those matters must remain off limits to the Commission until the criminal process is over. However, it is important that we get confirmation of that at an appropriate time in an appropriate way.

There is then the issue of other matters which have

come to attention. Issues with regard to them will have to be faced and considered. Included among those are whether there can be ongoing enquiry into those matters at the same time as the prosecutions are proceeding, and if that is to occur whether it will be necessary for those matters to be heard without any reporting, whether in the presence of the media or in totally secret hearing.

And, rather more importantly, even if the matters are dealt with in that way, whether the Commission could upon the competing evidence which it will inevitably hear from those who have complained and have a sense of grievance and police officers and those associated with them against whom the complaints have been made, and those involved in the processes which were undertaken at an earlier stage.

What exercises us is the extent to which it would be possible to compartmentalise those matters. If one carefully analyses the Terms of Reference, there are two levels. They are of equal importance but they have a different perspective about them.

One is the position of individual women and men, and I encompass with that women and men who have made complaints and women and men against whom complaints have been made. For them the focus is naturally and understandably upon the particular incident, what did or did not occur with regard to it.

The other aspect of the Commission's task is an assessment of the operational milieu, the culture, the environment in which these things occurred. It appears to us, at least without hearing argument to the contrary, that it would be impossible and certainly irresponsible to

endeavour to make any determinations with regard to those wider issues unless and until there has been an investigation of all matters, and that must necessarily include those in respect of which criminal prosecutions are now in train or may soon be in train.

So, the sort of questions which must arise is, do we more readily assist those who are affected at either or both levels by trying to do some piecemeal work (some staggered work) or is the inevitable conclusion, not that this Commission should have its Terms of Reference revoked but the timing of its work be made to synchronise with the criminal processes which have now begun?

Dame Margaret and I have no doubt that these are difficult and weighty questions and that there are not simple and absolute answers which arise in respect of them. But the point has been reached where we must make an assessment (having had the advantage of assistance from all who have an interest) in determining how we go forward. What we need particular assistance from in every regard is an operational system which will ensure the integrity of the criminal process, the integrity of our operation, adherence to fundamental principles and the acknowledgment of the needs of individuals who are affected by what is going on.

With that in mind, we are of the view that we should convene a special hearing on Friday the 22nd of April at 9.30 a.m. We invite written submissions, they will need to be filed at our offices by Friday the 15th of April and they should address in hard, cold, practical terms the issue of how this Commission pursues its brief at the same time as criminal processes are going on.

It is of no assistance to Dame Margaret or myself to

simply hear that there is a desire that nothing stop and that things be done quickly. What is now called for is some reality check as to how in a real world situation that can be achieved without contamination and without the purity of criminal processes being affected in any adverse way.

Does any counsel have any questions with regard to the assistance we are seeking and the course of action which we are proposing?

MS McDONALD: No, Sir.

HON JUSTICE ROBERTSON: In the back row?

MR UPTON: No thank you, Your Honour.

HON JUSTICE ROBERTSON: Ms Scholtens, any other matter which you wish to draw to our attention?

MS SCHOLTENS: No, Sir.

HON JUSTICE ROBERTSON: Well, we regret that this will be a further delay but it is essential that we move with careful and deliberate speed only. Once damage is done in an area as sensitive as this, it can never be retrieved. We all need to ensure that because what we do can have an effect on the rights and responsibilities of everybody who is touched by the matters before us.

We will accordingly adjourn until the 22nd of April.

Hearing adjourned at 2.30 p.m.