

**BEFORE THE COMMISSION OF INQUIRY
INTO POLICE CONDUCT**

SUBMISSIONS OF NEW ZEALAND POLICE

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Introduction

1. The Commission of Inquiry seeks submissions on the effect on its proceedings of possible criminal charges arising from the Rotorua and Kaitaia inquiries. In particular, the Commission has asked for submissions as to whether it should continue as a public inquiry, or whether, in the event that charges remain outstanding, the Commission should proceed in private. The Commission has asked for these issues to be addressed:

- 1.1 In the event that no criminal charges remain outstanding;

2. Plainly, no issue arises in the event that no criminal charges remain outstanding. Even if charges do remain before the courts, the Commissioner of Police supports the continuation of this Inquiry, and he considers that its proceedings should take place openly and in public, subject only to any suppression orders that may prove necessary as the Inquiry unfolds. The Commission was set up to address issues that have given rise to considerable public disquiet, and the public interest that gave rise to the Commission has not diminished. It is important that the Police have the opportunity to answer the allegations of investigative failure in the manner in which they have handled complaints of sexual misconduct against colleagues and associates. It will also be important that any shortcomings in the way that the Police have handled complaints of this kind are identified, and are the subject of appropriate recommendations. This process will be a vital part of restoring public confidence in the integrity of the Police; this, in itself, is a matter of significant public importance.

Matters Presently Before the Commission

3. None of the cases presently under consideration by the Commission is related to the matters that are, or may come, before the Courts. The Commission is seized of at least a dozen complaints that concern conduct unrelated to the Rotorua or Kaitaia incidents.
4. Once the Commission has heard evidence as to the complaints presently before it, the Police intend to present the Commission with approximately 200 additional files, covering the period from 1979 to 2004, for consideration on the papers. Analysis and assessment of these files will be a time-consuming process, but will provide the Commission with an insight into the performance of the Police in this area over the last 25 years. This process may identify further cases where oral evidence should be heard. Disclosure of these files will not risk the integrity of any other proceeding, and will put those cases about which the Commission hears oral evidence in their proper perspective. While the Rotorua and Kaitaia cases led to the establishment of the Inquiry, the cases presently before the Commission, together with the other 200 files, will provide the Commission with the best basis on which to assess Police conduct in those areas covered by the terms of reference. It will also mean that any recommendations the Commission makes will be based on a comprehensive analysis of the Police's performance in this area.

Prejudice

5. Concern has been expressed that publicity surrounding the Commission's hearings may prejudice any future trials arising from the Rotorua or Kaitaia matters. This concern is based on the assumption that media coverage of any discreditable conduct on the part of those officers whose cases the Commission will consider is likely to prejudice potential jurors against officers or former officers who are the subject of unrelated criminal charges. It is impossible to tell at this stage whether this assumption has any validity. In any event, the Commissioner considers that any potential prejudice can

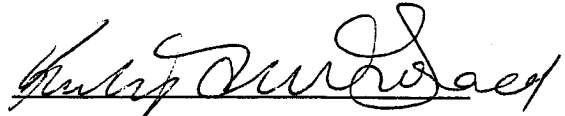
be managed without either discontinuing the Commission or moving to a private setting.

Media Coverage

6. It will be important that the Commission is not reported in a way that impacts upon the fairness of forthcoming trials. That said, it should not be assumed that the media will cover the Commission's sittings in an irresponsible fashion. In choosing to report this Inquiry, the media will do so subject to the normal obligation to refrain from any coverage that may impact on pending proceedings. The High Court has emphasised on many occasions in recent years that media organisations will be in contempt if they publish material that is likely to prejudice the fairness of a forthcoming trial. This is an obligation of which the media is acutely aware, and which it has considerable experience in discharging responsibly. If it appears, as the Inquiry unfolds, that the media is failing to appreciate its responsibilities in this respect, then further steps may prove necessary, however there is no present reason to assume that difficulties will arise.
7. In any event, the Commission has available to it a number of mechanisms that could, where necessary, minimise the likelihood that coverage of the Inquiry will prejudice other proceedings. Aspects of the evidence – those most likely to attract sensational reporting – will be dealt with by agreed summaries of facts. In appropriate circumstances, the Commission could make name suppression orders, and could suppress sensitive parts of the evidence. This would not undermine the public nature of the Commission – the Commission can remain open to the public to attend – but concerns about prejudice generated by the way the Commission is reported could be managed in this way. Aside from the issue of the names of complainants and the subjects of original complaints (which is dealt with separately), it will not be possible to predict in advance the circumstances in which suppression may prove appropriate. That said, the Commissioner agrees that open reporting should be the norm, and that special circumstances would need to be shown before suppression should be considered.

8. The Police would only support a move to private hearings as a last resort, and only in the event that continuation of the Inquiry was at risk. The Commissioner considers it very important that the performance of the Police in handling complaints of this nature is considered as openly as possible.

DATED at Wellington this 12 day of August 2004



Kristy P McDonald QC / D J Boldt
Counsel for New Zealand Police