



New Zealand Gazette

OF THURSDAY, 19 FEBRUARY 2004

WELLINGTON: FRIDAY, 20 FEBRUARY 2004 — ISSUE NO. 18

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:

Recitals

WHEREAS, in 1993–94, Louise Nicholas made a complaint to the Police at Rotorua alleging that she had been sexually assaulted in the mid-1980s by three members of the Police:

And whereas, following an investigation by the Police, and a further investigation by the Police on behalf of the Police Complaints Authority, none of the three members of the Police was charged with any offence and none of them was subject to any internal Police disciplinary action:

And whereas, when charges were preferred against a fourth member of the Police in relation to sexual assaults against Louise Nicholas, which were alleged to have occurred in the early 1980s, that member of the Police was, after two mistrials, acquitted:

And whereas, in February 2004, *The Dominion Post* reported allegations by Louise Nicholas of defects in the investigations made by both the Police and the Police Complaints Authority into the complaints against the three members of the Police above-mentioned:

And whereas concerns have been raised about the conduct of members of the Police involved in the investigation of allegations about the fourth member of the Police above-mentioned:

And whereas, in February 2004, Judith Garrett also alleged that the investigation carried out by the Police into a complaint that she made that she had been sexually assaulted by a member of the Police in Kaitia in 1988 was inadequate:

And whereas it has also been alleged that investigations carried out by the Police into other allegations of sexual assault by members of the Police or by associates of the Police or by both have been inadequate:

And whereas these various allegations raise questions about—

- (a) the adequacy and impartiality of the investigation by the Police into complaints in relation to sexual assaults alleged to have been made by members of the Police or by associates of the Police or by both, including the complaints made by Louise Nicholas and Judith Garrett; and
- (b) the extent to which the behaviour that gave rise to those original complaints was subject to disciplinary action; and
- (c) the prevailing attitude or tolerance of the Police, both in the past and now, in respect of complaints alleging sexual assault by members of the Police or by associates of the Police or by both; and
- (d) the general propriety of the conduct of members of the Police in respect of sexual matters:

And whereas the truth of the allegations against the Police and the questions raised by those allegations are matters of public importance:

Appointment and order of reference

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, appoint you, the Honourable James Bruce Robertson and Dame Margaret

Clara Bazley, 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, and, in particular, to inquire into and report upon:

- (1) the standards and procedures established by the Police as a matter of internal Police policy for the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
 - (a) whether, as a matter of internal Police policy, there have been, and are now, adequate standards and procedures in place regulating the handling of such investigations by members of the Police:
 - (b) whether, if so, any standards and procedures regulating the handling of such investigations by members of the Police have been, and are being, adequately communicated to all members of the Police:
 - (c) whether there have been, and are now, Police procedures adequately supporting and encouraging members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):
- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
 - (a) the practice of Police in relation to the investigation of the complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitaia and Rotorua (or other relevant localities) at the material times:
 - (b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
 - (c) whether police practice has met and now meets the applicable Police standards and procedures (if any):
 - (d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:
 - (e) whether disciplinary action has been and is taken against members of the Police who engage in sexual activity that gives cause for concern or complaint or both, and, if not, why not:
 - (f) whether the attitude of the Police has been, and is now, conducive to the effective and impartial investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
 - (g) whether Police practice that has been in place, and is now in place, adequately supports and encourages members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to

report the allegations to an appropriate senior member of the Police (or other appropriate person):

- (3) the adequacy of any investigations which have been carried out by the Police on behalf of the Police Complaints Authority and which have concerned complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, if any of those investigations have not been adequate, the respects in which they were inadequate:
- (4) the standards and codes of conduct in relation to personal behaviour for members of the Police and, in particular, but not limited to,—
 - (a) whether the applicable standards or codes of conduct within the Police in relation to personal behaviour, including sexual conduct, have been and are adequate and effective, and, if they have not been or are not adequate and effective, the respects in which they have been or are inadequate or ineffective:
 - (b) whether action has been or is taken if standards or requirements of codes of conduct are not met:
- (5) any other matter that may be thought by you to be relevant to the general or particular objects of the inquiry:

Definitions

And it is declared that, in this order, unless the context otherwise requires,—

associates of the Police means persons who are not members of the Police but who, whether in the capacity of friends or in any other capacity, associate with members of the Police:

member of the Police means—

- (a) a sworn member of the Police of any rank; and
- (b) a non-sworn member of the Police:

the Police means the Police of New Zealand; and includes all members of either sex appointed to the Police under the Police Act 1958:

Exclusion from inquiry

And it is declared that you are not, under this order, to determine the guilt or innocence of any particular individual in relation to any alleged sexual assault or other alleged criminal offence:

Appointment of chairperson

And, on that advice and with that consent, I appoint you, the Honourable James Bruce Robertson, to be the Chairperson of the Commission:

Power to adjourn

And, for the better enabling you to carry this order into effect, you are authorised and empowered to make and conduct any inquiry under this order, in accordance with the Commissions of Inquiry Act 1908, at such times and places as you consider expedient, with power to adjourn from time to time and from place to place as you think fit, and so that this order will continue in force and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

General provisions

And, without limiting any of your other powers to hear proceedings in private or to exclude any person from any of your proceedings, you are empowered to exclude any person from any hearing, including a hearing at which evidence is being taken, if you think it proper to do so:

And you are strictly charged and directed that you may not at any time publish or otherwise disclose, except to me in pursuance of this order or by my direction, the contents or purport of any report so made or to be made by you, or any evidence or information obtained by you in exercise of the powers conferred upon you, except such evidence or information as is received in the course of a sitting open to the public:

And it is declared that you have liberty to report your proceedings and recommendations under this Commission from time to time if you judge it expedient to do so:

Reporting date

And, using all due diligence, you are required to report to me in writing under your hand, not later than 1 November 2004, your findings and opinions on these matters, together with any recommendations that you think fit to make in respect of them.

Given in Executive Council under the hand of Her Excellency the Governor-General, this 18th day of February 2004.

DIANE MORCOM, Clerk of the Executive Council.

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