

25 March 2004

The Chief Executive Officer
Commission of Inquiry into Police Conduct
PO Box 5684
WELLINGTON

Dear Madam

Issues of Concern for the Police Association

1. Definitions

1.1 The Association supports the submissions made by the Commissioner and dated 22 March 2004.

1.2 As you are aware Recital (d) in the Order in Council includes inter alia:

“(d). The general propriety of the conduct of members of the Police in respect of sexual matters.”

1.3 This issue seemed to be addressed within the Terms of Reference only by 2(e) which includes inter alia:

“(e) Where the 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...”

1.4 It is the Association's view, that the Inquiry should only concern itself with allegations of criminal or quasi criminal activity by police officers and should not allow inquiry into the sexual practises of police officers unless there is an allegation of illegality regarding same. For the sake of clarity therefore activities which might loosely be described as “unethical” or “immoral” should have no place in this inquiry unless there is the further aspect thereof where unlawfulness is alleged.

1.5 The Association uses the terms criminal and quasi criminal to mean:

(a) Criminal: breaches the Crimes Act 1961 and charges have been laid and resolved; and

- (b) Quasi criminal: conduct which fits within the matrix of the Crimes Act 1961 but where charges have not been laid.

2. Specific Questions

- 2.1 Does the Inquiry accept, that inquiries should focus only on allegations of criminality or quasi criminality of police officers and their associates?
- 2.2 Does the inquiry accept that it cannot hear complaints now if no complaint was made to the Police at any time prior to 20 February 2004?

3. Representation for those of interest to the Inquiry

- 3.1 The New Zealand Police consists of 7000 officers both sworn and unsworn. The great majority thereof are Association members. It is anticipated that those of interest to the Inquiry are likely to be Association members given they are currently police officers or retired police officers who were at the material time members of the Association. The Association expects to receive requests for legal assistance.
- 3.2 The Commission has indicated that those who are of interest to the Inquiry and potentially subject to adverse comment will be entitled to be legally represented and the implication is, that such representation will be funded. Accordingly we enquire:
 - (a) To whom should such applications for funding be directed?
 - (b) What policy will apply to such applications – for example what hourly rate will be provided? Is there to be a maximum number of hours funded? Will there be a panel of those acceptable for appointment?

4. Evidence

- 4.1 The Association anticipates that those of interest to the Inquiry will fall within three general categories:
 - (a) Those who have been charged with a criminal matter and been convicted.
 - (b) Those who have been charged with a criminal matter and been acquitted.
 - (c) Those who have not been charged, but against whom allegations are made.
- 4.2 It is the latter category which is of concern to the Association.
- 4.3 The Association is conscious of Section 4C of the Commissions of Inquiry Act 1908 and subsection 4 thereof which provides:

“Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in Courts of law...”

- 4.4 Those who fit within the third category may wish to decline to answer questions about their alleged activities on the basis that such might:

“have a tendency to expose the deponent to any criminal charge...”

- 4.5 The Association wishes to facilitate the full and frank inquiry into allegations made but at the same time is concerned that the rights of its members called to account (who have not already been dealt with by the Court) are not subject to compromise.

- 4.6 It is anticipated that the majority of the complaints received by the Commission are likely to fall into this group and unless immunity from prosecution is provided or some other protection afforded then there may be an unintended difficulty with the pursuit of the Commission’s terms of reference.

- 4.7 The Association believes it to be prudent to raise this issue at this time, so as to have the issue addressed in concept prior to the calling of evidence, to which end the Commission’s guidance is sought.

5. Police Complaints Authority Act 1988

- 5.1 The Association is conscious that the Police Complaints Authority will need to address Section 32 of the Police Complaints Authority Act 1988 prior to the release of information to the Commission.

- 5.2 Association members will have an interest in this decision in one of two capacities:

- (a) They will have provided information which they understood to be secret.
- (b) They will be the subject of such secret information.

- 5.3 It would assist the Association in deciding what course to adopt in this regard, if the Police Complaints Authority would identify by way of category the information it holds which may be subject to Section 32, which may be required by the Commission.

- 5.4 A direction in this regard would be appreciated.

Yours faithfully
GOVETT QUILLIAM

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