

STACE HAMMOND

SINCE 1912

BARRISTERS & SOLICITORS

OFFICE: **Hamilton**

OUR REF: *Giles Brant*

YOUR REF: *Rebecca Boyack*

Partners

P.W.F. Wilson, LL.B.

M.D. Grant, LL.B., AAMINZ (Arb.)

G.H.J. Brant, B.Com., LL.B.

W.J. Hoare, LL.B.

R.P. Connolly, LL.B.

K.J. Crossland, LL.M. (First Hons),

M.Com.Law (First Hons)

Associate

D.L. Phillipps, LL.B. (First Hons)

7 April 2004

The Commissioners
Commission of Inquiry into Police Conduct
PO Box 5684
WELLINGTON

By Facsimile: (04) 499 7268

By email: info@cipc.govt.nz

URGENT

JOHN BUCHANAN DEWAR – LOUISE NICHOLAS

1. Thank you for your letter of 31 March 2004 received by us on 5 April 2004. We also acknowledge receipt of your facsimile letter of 6 April 2004 with enclosures.

Costs

2. The starting point is Lord Salmon's 6 Cardinal Principles stated in the Royal Commission on Tribunals of Inquiry (1966): Report of the Commission under the Chairmanship of the Right Honourable Lord Justice Salmon. Lord Justice Salmon described the 6 Cardinal Principles as "of the highest importance" which "should always be strictly observed".¹ The 6 Cardinal Principles are:

- 1 Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.
- 2 Before any person who is involved in an inquiry is called as a witness he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
- 3(a) He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.
- 3(b) His legal expenses should normally be met out of public funds.

¹ Page 22.

- 4 He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
- 5 Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard.
- 6 He should have the opportunity of testing by cross examination conducted by his own solicitor or counsel any evidence which may affect him.

These principles were referred to favourably in the Department of Internal Affairs publication *Setting Up and Running Commissions of Inquiry*, at Appendix V.

3. Our client is preparing for the Commission of Inquiry. This is entirely understandable as the accusations in the media and the terms of reference make it clear that Mr Dewar will be the centre of the Commissioners' Inquiry into the Nicholas matter. To quote examples from the terms of reference:

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

and at 2(a):

...the practice of Police in 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 investigations of complaints alleging sexual assaults by members of the Police or by associates of the Police or by both in...Rotorua (or other relevant localities) at the material times.

4. The Nicholas accusation:
 - (a) is the complaint given prominence in the Recitals to the terms of reference;
 - (b) was given prominence in the media and the consequent public expectation that Mr Dewar's investigation would be reviewed. The media have given prominence to Mr Dewar and used his image regularly when presenting stories;
 - (c) was, for all intents and purposes, why the Commission of Inquiry was established.
5. In accordance with Cardinal Principle 2 the terms of reference generally set out the allegations against Mr Dewar although, in due course, particulars of the nature of the alleged defects will be required (as with any matter referred to a decision maker/inquirer, matters begin generally and then move to more specific issues).
6. Our client is concerned that his status and the funding of his costs are not being attended in a timely way. Indeed our client takes the view that he is being fobbed off. There are three principal reasons for this concern.
7. We firstly refer to a letter received from the Minister of State Services, the Honourable Trevor Mallard dated 31 March 2004 (copy **enclosed**). Our correspondence to the Minister of State Services and the Minister of Internal Affairs have both been referred to the Minister of State

Services who we understand to be the Minister responsible for the Commission of Inquiry. In Mr Mallard's letter he states:

I am advised that the Commissioners are currently considering requests to be named as parties to the inquiry, and whether any named parties should have their costs met by the Crown. The Commission will respond to you about this matter.

8. The Minister is clearly placing the responsibility with the Commissioners to make a decision.
9. We secondly refer to your letter of 31 March 2004 in which you state:

The possibility of recommendations being made for assistance with costs of counsel only emerge when the nature and extent of evidence becomes apparent.

This is viewed by Mr Dewar, and indeed the writer, as a failure to grasp the nettle. The nature and extent of the evidence is obvious. The nature and extent of the evidence will include, at least:

- (a) Evidence from Nicholas.
 - (b) Evidence from Dewar.
 - (c) A review of the prosecution file.
 - (d) A review of the Police file.
 - (e) A review of the Policy Complaints Authority file (once the way is clear to make it available).
 - (f) A review of the transcripts of the depositions and the three Nicholas trials.
 - (g) A review of the observations of the three Judges' rulings and in particular that of Judge Lance QC who criticised Mr Dewar when making his costs award.
 - (h) A review of the Police file and/or the Police Complaints Authority file prepared by Mr Miller.
 - (i) Evidence from Mr Miller (who investigated on behalf of the Police Complaints Authority Mr Dewar's handling of the Nicholas matter as a result of the adverse comments made by Judge Lance QC).
 - (j) Similar analysis will be required of the other inquiry undertaken by our client into a second Police Officer accused of sexual assaults in Rotorua which is unrelated to Mrs Nicholas. We refer to our letter dated 5 March 2004.
10. Our client is understandably wanting to take timely advice as circumstances arise with respect to the inquiry and gather evidence in preparation for the inquiry. To date our client has attended to a number of matters including:
 - (a) Briefing witnesses.
 - (b) Gathering documents (which are so far extensive) and considering same.

-
- (c) Requiring from various persons information pursuant to the *Official Information Act* 1908 and the *Privacy Act* 1993. Information requests have been sought from the Police, the PCA, Television New Zealand and others.
 - (d) Notifying the Ombudsmen and Privacy Commissioner of failures by some organisations to respond or provide the requested information and seeking reviews.
 - (e) Obtaining access to court files and reviewing same.
 - (f) Attending to matters related to the Commission itself including reviewing the Commission's Minutes and attending to other matters of procedure.
11. All matters attended to are directly related to preparing for the Commission of Inquiry. Cardinal Principle 3(a) and 5 suggest that there would be an injustice to a person such as our client if he was not given adequate opportunity to prepare his case and call material witnesses.
 12. The third reason Mr Dewar is concerned about the costs issue is the comments made by counsel assisting the Commission in the memorandum dated 5 April 2004. We refer to paragraph 23 of that memorandum. With respect to Mr Dewar it is clear that Mr Dewar is at risk of adverse comment because it was his investigation and his actions which are the subject of the Nicholas allegations.
 13. We refer to paragraph 24 of that memorandum. It is for the Commissioners to ensure that the Cardinal Principles (which are not referred to at all by counsel) are observed to ensure safeguards for interested parties. As noted by Mr Mallard, the Commission at the informal meeting of 15 March 2003 and at the public meeting on 22 March 2004, it is for the Commission to make recommendations to the appropriate Crown department (presumably the Ministry of Internal Affairs) that a person should receive Crown funding. It is then for that interested person (through counsel) to negotiate the terms of funding. It is not the function of the Commission (nor for that matter counsel assisting the Commission) to take a view on how funding should be attended to in practice. It is the role of the Commission to recommend that the person receive funding from the Crown to ensure that Cardinal Principle 3(b) is complied with.
 14. For Counsel assisting the Commission to suggest that applications for legal aid be made or that an approach to the Attorney General's office be made is entirely unhelpful and seems to be allowing Mr Dewar to wallow in uncertainty and anxiety. We understand that the appropriate department is State Service once a recommendation is made. Indeed, the submission fails to take into account the Commission's role of ensuring that persons are protected and that the Cardinal Principles are complied with. Given that the Commission has no funds itself it can only make recommendations to the Crown so that Cardinal Principle 3(a) can be complied with.
 15. It is trite to observe that there is a heavy burden upon the Commissioners, and in particular the Chair to ensure that the Commission of Inquiry proceeds in a manner which accords with the principles of natural justice (including the Cardinal Principles) and does not breach a person's rights.
 16. Our client contrasts his position with that of his accuser Mrs Nicholas as reported in an on-line publication of the Dominion Post (copy **enclosed**). The Prime Minister is reported as saying that it is "desirable" that the women be assisted with their legal expenses. The issue of meeting the complainants' costs is reported as having been discussed at the Cabinet meeting on 5 April 2004.

17. It appears that Mrs Nicholas' costs are being considered at high levels whereas our client is being left to fund his own costs of preparation. We note in passing and with interest that Mrs Nicholas has a maintainer for all of her legal costs to date in the form of the Dominion Post (the author of the article) and TVNZ. This has the appearance of those maintainers wanting to pass the cost on to the Crown.
18. The Prime Minister is reported as saying:

We are currently considering what best way of achieving [funding for complainants] is. In principle it is important that people whose complaints have in effect sparked an inquiry are assisted with representation.
19. The Prime Minister's comments may have unwittingly usurped the Commission's role of settling its own procedure. In this instance it is the Commission's role to make recommendations as to who should be represented by their own counsel with funding and who should have their evidence led by counsel assisting the inquiry. It is for the Commission to ensure that the norms of natural justice and indeed the Cardinal Principles are complied with.
20. Our client is meeting his own costs. He was not a member of the Police Association (given his former rank and position) and the New Zealand Police Guild have declined to fund his defence as the request falls outside their mandate (copy of letter **attached**). The Prime Minister is silent about persons in the position of Mr Dewar. One can only draw the inference that his position was not considered given that Mr Mallard has referred the matter back to the Commission for a recommendation.
21. Our client cannot help but see the foreboding shadow of the state (driven politically by the public comments of the Prime Minister referred to above) and all of its resources being rallied against him. Yet the Commission is delaying making a decision with respect to his costs leaving our client entirely isolated.

Consensual Sex

22. We have received from Television New Zealand a copy of an affidavit sworn by an unidentified woman who alleges that our client was engaged in consensual group sex with herself and Mr Shipton. We **enclose** a copy of that affidavit. The allegation in the affidavit to the extent that it is relevant to our client is denied. However, there is the relevant issue of whether the Commission should consider whether private consensual (non-criminal) sexual conduct falls within the terms of reference. While on the one hand it could be said that this alleged incident was private and consensual and therefore outside the terms of reference we note that in the statement it is alleged:
 - (a) Mr Dewar was involved in group sex; and
 - (b) Was involved in group sex with Mr Shipton; one of the policeman at the centre of the Nicholas rape allegations.
23. This is relevant to the terms of reference with respect to the Nicholas matter. Our client wants the opportunity to deny the allegation in public and question the woman making the allegation in accordance with Cardinal Principle 6. In effect, our client consents to this matter being referred to in the inquiry.

Conclusion

24. Our client has instructed the writer not to attend the public meeting tomorrow because of costs issues although it would be entirely desirable for Mr Dewar to be represented.

Yours faithfully

STACE HAMMOND


G H J BRANT
Partner

DDI: (07) 838 0250
MOBILE NO: (025) 924 854
EMAIL: GilesB@shg.co.nz

File No: DEW855/1
Ref: gzo: 0404x0701-Ghb

c.c.
John Dewar



Hon Trevor Mallard

Minister of Education

Minister of State Services

Minister for Sport and Recreation

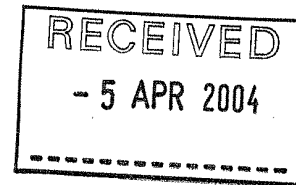
Minister responsible for the Education Review Office

Minister for the America's Cup

Associate Minister of Finance

31 MAR 2004

Mr G H J Brant
Partner
Stace Hammond
Barristers and Solicitors
PO Box 19 101
HAMILTON



Dear Mr Brant

Thank you for your letter of 5 March 2004 requesting that Mr Dewar's legal costs for the Commission of Inquiry into Police Conduct be paid by the Crown.

I am advised that the Commissioners are currently considering requests to be named as parties to the inquiry, and whether any named parties should have their costs met by the Crown. The Commission will respond to you about this matter.

Yours sincerely

Hon Trevor Mallard
MINISTER OF STATE SERVICES

Legal aid ruled out for rape inquiry

TUESDAY, 06 APRIL 2004

By GORDON JON THOMPSON

The Cabinet is looking at previous commissions of inquiry to see how best to help complainants in the investigation into police rape allegations.

The issue was discussed at yesterday's Cabinet meeting, with the Government under pressure to contribute to the women's legal costs. Officials are considering how much money may be needed and where it would come from.

Attorney-General Margaret Wilson said because the commission of inquiry was not a criminal trial, giving legal aid was not an option.

Instead, the Cabinet would look at how earlier commissions of inquiry, such as the one into the Cave Creek disaster, had helped complainants.

Other commissions of inquiry had appointed lawyers to help complainants.

Prime Minister Helen Clark said the Cabinet thought it was "desirable" the women were assisted.

". . . We are currently considering what the best way of achieving that is. In principle it is important that people whose complaints have in effect sparked an inquiry are assisted with representation."

Rotorua woman Louise Nicholas sparked the commission of inquiry after alleging she was pack-raped by three police officers in 1986. The men have denied the allegations.

She has called for the Government to pay her legal fees, which have so far been met by The Dominion Post and Television New Zealand.

A lawyer has been acting for Mrs Nicholas while the police have interviewed her extensively. She will also need representation at the commission of inquiry.

The issue has been with the Government since early February.

Mrs Nicholas alleges she was pack-raped in 1986 by former officers Bob Schollum and Brad Shipton, and Clint Rickards, now an assistant commissioner. The men have said the sex was consensual and have denied rape.

THE DOMINION POST

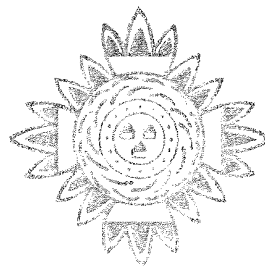
»RETURN TO PARENT SECTION

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THE POLICE MANAGERS' GUILD

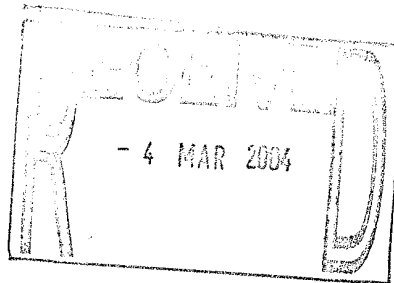
(The New Zealand Police Officers' Guild Inc.)

Te Roopu tiaki o nga rangatira pirihiimana



3 March 2004

Kalev Crossland
Partner
Stace Hammond
Barristers and Solicitors
PO Box 19-101
Hamilton



Dear Mr Crossland

I write in reply to your letter of 23 February 2003 enquiring as to whether the Guild Management Committee would be prepared to recommend to Guild Conference a change to the Guild Rules to extend coverage of the Guild Legal Assistance Rule to retired members of Police who had been members of the Guild prior to retirement.

I have referred your letter of 23 February to both Guild Management and Conference members for consideration.

The decision is that the Guild is not prepared to change its rules to extend coverage of its legal assistance to former Guild members who have retired from Police.

You can be assured that the Guild did not take this decision lightly and fully considered the implications of the decision.

Yours sincerely


Earle Cooper
Field Officer

Located at the Royal NZ Police College
Private Bag 50906, Porirua
Telephone: 04 - 2383 129 (DDI) or 43129 (Tie-line)
Mobile: 0274 - 812261

Facsimile: 04 - 2371 698
E-mail at work: earle.cooper@police.govt.nz
E-mail at home: earle.cooper@xtra.co.nz

I, [REDACTED], swear.

This is a sworn affidavit dated February 12 2004 regarding incidents that I have told TVNZ reporter Philip Kitchin about when he interviewed me on February 11 2004 in Rotorua.

The interview was on-camera but I have been given a written assurance by Mr Kitchin and the camera operator Zane Willis that I will not be identified in a news report TVNZ intends making on what I told him.

Mr Kitchin assures me my voice will be disguised so that people will not recognise it as me speaking.

Mr Kitchin has twice told me that he is only interested in the truth and I understand that if I have told him untruths and the statements end up in court I could be arrested and charged with perjury.

I knew former policeman Brad Shipton and current policeman Clint Rickards when they were both serving police officers in Rotorua in about 1986.

I met Mr Shipton because I went to see him about a police matter involving [REDACTED]. I became upset in his office and he told me I should go home and he would come and see me at my home.

He did this and later began turning up at all hours. We began having a relationship including having sex. One night he brought Clint Rickards around and suggested we have group sex. Group sex took place on that occasion and on several subsequent occasions.

Mr Rickards and Mr Shipton would also call around individually and have sex with me.

The sex was consensual but there was one occasion when they both came around with a police officer from Auckland. I do not know his name. That person was pushy and said he was going to have sex whatever I thought. [REDACTED], another police officer who I was then having a relationship with, was in the house on that occasion. He witnessed that Messrs Rickards, Shipton and the Auckland policeman were there to have group sex but that did not eventuate, probably because of [REDACTED] presence.

On one occasion Brad Shipton brought John Dewar to my house and introduced him as his friend and boss. The three of us had group sex. It was full sexual intercourse and was consensual.

John Dewar also came around for sex on another occasion when he was on his own. I can say with certainty that John Dewar was a friend of Brad Shipton's.

There were times when Clint Rickards would pick me up in a police car when he was on duty and take me to meet Brad Shipton who was then stationed in Tauranga. We would meet at night on the side of the road and have sex.

On one of these occasions Clint Rickards got a call to go to a police job while we were on the side of the road. Mr Rickards said he was going to leave me on the side of the road and return to duty. I protested and he relented and took me home.

Brad Shipton got me pregnant and I went to Auckland for a termination. I told him about this and I also told a friend that it was Brad Shipton who got me pregnant.

When I returned from the termination, Clint Rickards, insisted on me giving him oral sex.

The last time I saw any of these men was within the last two years when I saw Clint Rickards driving past my house. I hid. He later telephoned and I deflected his intentions by saying I was happily married.

[REDACTED]

McCowan

Looking back now, I believe these men preyed on my vulnerability as a widow who went to the police to deal with official police matters. Their behaviour was not appropriate for police officers.

Most of the sex took place in 1986 and 1987 but with the exception of the incident involving the Auckland policeman, it was consensual but in hindsight I believe these men preyed on my vulnerability at the time.

I do not have a criminal record and I have no history of mental illness. My husband supports me in speaking about these matters which have particularly troubled me since I saw Louise Nicholas speaking out. I wished to speak out partly to support her, partly because I believe there may be other women who may have had unwanted attention from these men and partly because I have seen public statements made by Mr Dewar that are not correct. I wished to set the record straight.

This is a truthful and accurate statement and I stand by it.

Signed [Redacted Signature]

Sworn before me at Rotorua this 12th day of February 2004

David Dowthwaite

David Dowthwaite
Barrister and Solicitor of the High Court of New Zealand

DAVID DOWTHWAITE
SOLICITOR
ROTORUA