

THE ROBINSON REPORT

DELETIONS

Certain paragraphs (6.22, 6.37 and part 6.41) have been deleted due to the requirements of the Privacy Act 1993



14th December 1999

SUMMARY REPORT OF THE ENQUIRY BY DEPUTY COMMISSIONER INTO AN INCIDENT INVOLVING THE COMMISSIONER OF POLICE IN A VEHICLE STOP BY A POLICE PATROL IN INGLEWOOD PLACE, WELLINGTON ON 27TH NOVEMBER 1999

1 Preamble

- 1.1 On Friday 3rd December 1999, in the late afternoon, a reporter from the Holmes show made contact with staff at Wellington Central Police Station seeking confirmation that Peter Doone, Commissioner of Police, had been stopped by a Police patrol in Wellington on Saturday 27th November 1999. Constable Masters initially took the call which was passed to his supervisor Sergeant Butson.
- 1.2 Sergeant Butson established brief details of the 'Holmes' enquiry before terminating the call and escalating the matter to his Acting Area Manager, Inspector Bailey. He in turn escalated the matter to Superintendent Kelly, Wellington Police District Manager. Mr Bailey also contacted Ms Calder, Media Manager, Office of Commissioner, for advice. Ms Calder contacted her Executive Manager, Mr Player, General Manager : Public Affairs and the media enquiry was brought to the notice of the Commissioner of Police.
- 1.3 The Commissioner confirmed to Mr Player and Ms Calder that he had been a passenger in a car stopped by on-duty Police officers in Wellington on 27th November 1999. The Commissioner provided some explanatory comment, some of which was provided to 'Holmes'.
- 1.4 Mr Player was concerned about the implications of this incident and contacted and briefed me on the matter as he understood it at that time.
- 1.5 I confirmed the circumstances that Mr Player had reported to me with Superintendent Kelly before considering further action. Once I was satisfied the 'Holmes' enquiry had a degree of validity I commenced further actions. This included a brief media response confirming I had commenced an enquiry.
- 1.6 I also spoke directly to the Commissioner by telephone during the evening and informed him the matter had been brought to my attention and that I had commenced an enquiry.

2 Actions

Enquiry

- 2.1 I provided direction to Superintendent Kelly and Superintendent Paul Nickalls, National Internal Affairs Manager, Office of Commissioner, to commence an enquiry into this matter. I assumed control of the enquiry from the outset with a delegation to Superintendent Nickalls to oversee all enquiry action with a direct report to me. I requested Detective Inspector Wildon to be released by Superintendent Kelly to assist Superintendent Nickalls as required.
- 2.2 The result of enquiry is reported in detail below.

Notifications

- 2.3 On Friday 3rd December 1999 I notified the Hon. Clem Simich, Minister of Police via Superintendent Thomas, Ministerial Liaison Officer, of the brief circumstances as I knew them. The Minister did not request a personal briefing on the night.
- 2.4 I also called Dr Mark Prebble, Chief Executive, Department of Prime Minister & Cabinet and spoke directly with him. He indicated he would carry my briefing to the Rt. Hon. Jenny Shipley, Prime Minister and the Prime Minister elect Hon. Helen Clark.
- 2.5 As I was absent from Wellington at the time I was notified of the incident and in anticipation of the likelihood of further media interest during the weekend I also briefed Assistant Commissioner Paul Fitzharris, Office of Commissioner. This would enable Fitzharris to act as an alternate Executive adviser to Mr Player on media matters if I were unavailable for any reason.
- 2.6 In the following days throughout the enquiry I have maintained contact with Minister of Police Simich, Dr Mark Prebble and key internal advisers, Mr Player, Assistant Commissioner Fitzharris and Superintendent David Kerr, National Legal Services Manager, Office of Commissioner.
- 2.7 I have sought and received advice from Mr John McGrath, Solicitor-General and consulted with His Honour Judge N C Jaine, Police Complaints Authority on several occasions and Mr Michael Wintringham, State Services Commissioner on one occasion.
- 2.8 On Wednesday 8th December 1999 I formally advised Mr Peter Doone, Commissioner of Police, by letter of the nature and status of my enquiry. I requested interviews with him and his partner Ms Robyn Johnstone who I believed to be the driver of the car stopped by Police. These were subsequently arranged, through Mr Doone's solicitor Mr John Upton, QC for Friday 14th December 1999.
- 2.9 Also on Wednesday 8th December 1999 I formally advised His Honour, Judge Jaine, Police Complaints Authority of the incident pursuant to Section 2(a) of a Memorandum of Understanding dated 10th November 1994 between the Commissioner of Police and the Police Complaints Authority. I also provided additional documentation of issues of 'complaint' to the PCA on 13th December 1999.

2.10 On Friday, 10th December 1999 Hon. George Hawkins was sworn in as Minister of Police. I provided a comprehensive verbal briefing of the incident and the status of my enquiry to Minister Hawkins on this day.

3 Enquiry

Taskings

- 3.1 Upon confirmation of the availability of both Superintendent Nickalls and Detective Inspector Wildon to undertake the main bulk of the enquiry I tasked Superintendent Nickalls with oversight of all enquiry matters and required him to report to me on these.
- 3.2 Having considered that there may be a need for the Commissioner of Police and his partner to be formally interviewed at some stage I directed that these interviews were to be conducted by Superintendent Nickalls.
- 3.3 I directed Superintendent Kerr to research and provide discussion on points of law relevant to this enquiry, including but not exclusively :
- Road Transport law relating to the stopping of vehicles by Police and breath testing for alcohol; and
 - Criminal law relating to the offences of 'Obstruction of a Constable'; and 'Attempting to pervert the course of justice'.
- 3.4 I further directed Superintendent Kerr to review the facts gleaned during this enquiry and report his opinion as to whether any criminal offence is disclosed by them. The product of this direction is reported at Part 4 below.

The Incident I-Car Attendants

- 3.5 The incident car that commenced the stop of the Commissioner of Police's contract car XT5467 was code named WNI52. That code discloses that it was an I-car from Group 5 and it was number 2. They had commenced work on Saturday 27th November at 1600 hours. The occupants of the car were Constable Mark Alexander Haldane, 34 years of age with 5½ years Police service. He was the passenger of the motor vehicle. The driver was Constable Brett William Main, 32 years of age and was on his third day of duty in the New Zealand Police following graduation from the Royal NZ Police College.
- 3.6 The Police patrol was driving north along Taranaki Street approaching the intersection with Dixon Street, Courtenay Place and Manners Street. As the patrol approached Inglewood Place a Nissan Maxima motor vehicle turned right into Inglewood Place. This vehicle did not have any lights turned on. The vehicle did however have its right hand indicator indicating the turn. Following a short conversation the Constables made a decision that they would stop the vehicle. This is commonly referred to by Police as a '3T' which is a radio code for a vehicle stop.

Constable Brett William Main (BMI454)

- 3.7 Constable Main states that he drove into Inglewood Place behind the Nissan Maxima and activated the flashing red and blue lights as an indication to the driver of the

Maxima that he wished the vehicle to stop. He advises that at about the same time the vehicle headlights were turned on but is unsure in which order those two events happened. He advises that the Maxima stopped in Dixon Street just around the corner from Inglewood Place. He stopped the patrol car at the end of Inglewood Place at a right angle to the Maxima.

- 3.8 He alighted from the vehicle and as he did so took hold of the Alcotest passive breath-testing device, commonly known as a "sniffer". As he was alighting from the vehicle he accidentally knocked the device against the siren switch and that activated the siren. He was able to turn it off immediately. He noticed the passenger from the Maxima motor vehicle alighting from it and walking towards him. They met in the middle. He did not recognise this person at first and was greeted by this person saying words to the effect "*why have we been stopped*". The Constable replied with words "*because you didn't have your lights on and I would like to speak with the driver*" or words to that effect. Whilst making this statement the Constable recognised the person to whom he is speaking as the Commissioner of Police. He states he immediately felt very nervous. The Commissioner responded to him and Constable Main believes that he said words to the effect of "*yep that's ok, I am just out with a friend on a Saturday night having dinner*". The Constable does not think that he responded but nodded his head in acknowledgement. Constable Main states that the Commissioner then spoke again saying "*we'll be on our way*" or something to that effect.
- 3.9 The Constable is adamant that the Commissioner did not introduce himself and he also stated that he did not feel like he could respond because it was the Commissioner and he wasn't sure what would happen if he took it any further. Constable Main stated that as they were standing the Commissioner moved slightly towards his left and that placed him in a position more or less directly in the Constable's path to the driver. He does not know whether that was deliberate. The Constable's final comments about the interaction were that he felt intimidated by the presence of the Commissioner. He does not say that the Commissioner deliberately intimidated him but that is how the Constable felt.
- 3.10 Constable Main returned to the Police patrol car without having spoken to the driver about the traffic infringement nor did he take the issue of sobriety of the driver any further. The Constable could not comment as to any indication that the Commissioner had been drinking.
- 3.11 Constable Main states that back in the Police car he was questioned by Constable Haldane as to why he had not spoken to the driver and that he was instructed on how to undertake the correct procedure. Constable Main acknowledges that at the Police College he had been instructed on the procedures to undertake when stopping vehicles on traffic matters and that if confronted by the passenger the procedure was to ask them to step aside or remain in the vehicle so he could speak to the driver. His final comment is that given his limited experience that he felt overawed when confronted by the Commissioner but that he has a clear view of what he should have done, that is to have spoken to the driver of the vehicle.
- 3.12 Note : Constable Main at 32 years of age has a previous occupation of a retail sales person and an Outdoor Education Instructor. His course report shows him as naturally quiet, mature and adopting a professional approach to his work.

- 3.13 Perusal of the recruiting portion of the Personnel File for Constable Mains gives weight to the comment that he has a quiet, conscientious approach to work. During his Scope duties at Wellington under the supervision of Sergeant J Ross, the comment was made that he was "*Quiet. Prepared to listen and learn. He was not over confident.*" Others interviewed during the recruitment process provide similar comments on Constable Main.

Constable Mark Alexander Haldane (MHF998)

- 3.14 Constable Haldane was the passenger and remained in the Police vehicle. He advises that Constable Main activated the red and blue lights but makes no comment as to the lights then being turned on in the Maxima motor vehicle. He believes that when the Maxima stopped and parked in Dixon Street that the Police car came to a stop some 3 metres behind. As he had the car radio in his hand requesting a Query Vehicle Response (QVR) from the Communications Centre, Constable Main got out of the car to go and speak to the driver. As he got out he leaned back in saying the words "*forgot the sniffer*" and took it from the centre armrest between the two front seats. At the same time Constable Haldane observed somebody getting out of the Nissan Maxima vehicle from the front passenger door.
- 3.15 As the passenger from the Nissan walked around the rear of that motor vehicle Constable Haldane heard this person say "*what have I done wrong, what have I done wrong*" in a surprised voice. Constable Haldane heard this, he says, because his window was open and the words used were loud enough to carry to him. He believes the words were not threatening or angry. Constable Haldane states that when Constable Main was picking up the 'sniffer' he accidentally activated the siren switch. He noted that the person who had alighted from the Maxima was bending over with his hands over his ears and in his view that was because of the noise of the siren. At that time this person was standing directly between the vehicles.
- 3.16 Constable Haldane observed both Constable Main and this person in conversation, he believes less than an arm length apart, and at that stage he had recognised this person as the Commissioner. Whilst the two were talking, Constable Masters who was an off-duty Constable from the same Group, approached the Police vehicle and spoke with him. The response to the QVR came back from the Communications Centre as being registered to the New Zealand Police. Constable Haldane then observed both Constable Main return to the patrol car and the Commissioner returning to the front passenger side of the Maxima. He questioned Constable Main as to what was going on and he asked him if he had completed a breath screening test on the driver. Because Constable Main said that he had not he spoke to him about the procedures that should have been undertaken. Both Constables left the scene to attend an attempted suicide incident.
- 3.17 Later that evening they spoke with their supervisor Senior Sergeant Collins and advised him of what had transpired and they were further advised the requirement to check the driver's sobriety under the circumstances.

Incident Witnesses

- 3.18 There were two independent witnesses to this incident who were interviewed in this enquiry. The first was an off-duty Constable who followed the Police patrol car into Inglewood Place with the intention of dropping off passengers. The second was the

17 year old son of Superintendent Cox who had walked through the scene and witnessed the event.

Constable Robert Andrew Masters (RMG753)

- 3.19 Constable Masters was from the same section as Constables Main and Haldane. He has 3 years and 4 months service. He was off-duty on the night. He was driving his private vehicle and entered Inglewood Place behind the patrol car, saw the patrol car activate its red and blue lights and at that time noticed a vehicle in front of the patrol car. He observed the front car stopped in Dixon Street, he believes partly on the footpath with the patrol car stopping some 2 metres behind it. His passengers alighted but he was unable to exit Inglewood Place because the patrol car was blocking his exit. He observed that it was raining heavily at the time.
- 3.20 He observed the driver of the patrol car get out of the car and at the same time he believed that this was when he heard the siren being activated. He believes that at the same time also a male person got out of the front passenger door of the other car that was stopped in Dixon Street. He did not recognise this person and he did not see the driver of the vehicle. He observed both Constable Main and this person talking and it was soon after that that he recognised the person to be the Commissioner of Police. He believed that Constable Main looked "*a bit flustered*". He saw Constable Main turn away and looked as if he was unsure of what to do. He then moved back towards the patrol car. At the same time the Commissioner turned and walked back to his vehicle and got into the front passenger seat.
- 3.21 Constable Masters confirmed that Constable Main did not speak to the driver of the Nissan car. He approached the patrol car and spoke with Constable Haldane who was at the time writing in his notebook and holding on to the radio hand piece. Constable Masters believes that the length of time that this interaction took place would have been no longer than 2 to 3 minutes.
- 3.22 On Friday 3rd December Constable Masters was in the Muster room of the Wellington Police Station in the late afternoon when he took a telephone call from Julie Roberts from the 'Holmes' programme on TV1. Roberts was enquiring about the incident with the Commissioner on 27th November 1999. Constable Masters immediately transferred the call to Sergeant Butson, his supervisor.

Jonathan James Cox

- 3.23 Jonathan is a 17 year old student and the son of Superintendent Graham Cox, District Manager Counties Manukau. On Saturday, 27th November 1999 he travelled with a friend by bus into Wellington from Johnsonville leaving at about 8.30pm. They walked along the southern side of Courtenay Place and as he approached the intersection with Taranaki Street he heard a siren for a short period of time. He distinguished the siren as coming from a Police vehicle. At that stage he did not see the Police vehicle.
- 3.24 When he had crossed Taranaki Street he saw a Police car with its red and blue lights flashing in a stationary position at the end of Inglewood Place where it exits on to Dixon Street. At that stage he did not see any other cars backed up behind the Police car and as he approached the corner of Dixon Street he saw a Nissan Maxima car parked just into Dixon Street. At this point of time he was on the footpath outside the Hope Gibbons Building. As he rounded the corner into Dixon Street he saw the

driver of the Police car alight. He saw that there were two people in the Nissan Maxima although he did not pay any further attention.

- 3.25 He entered a pinball parlour that has an entrance adjacent to the Inglewood Place intersection with Dixon Street. When he came back out a minute or two later he saw the Commissioner of Police, Mr Peter Doone at the rear of the Maxima motor vehicle talking with a Police officer. He believes this was on the footpath and they would have been about 5 metres from the rear of the Maxima. He observed that they were within arms length of each other but he could not hear what was being discussed. He noticed that the driver of the Maxima was a woman that he had not seen before and that the car doors to the Maxima were closed. He did not look back at all and walked along Dixon Street with his friend to whom he made no comment as his friend did not know who the Commissioner was.

Police Supervision

- 3.26 On Saturday 27th November Group 5 were on duty on late shift and commenced duty at 1600 hours. Senior Sergeant Collins was in charge of the group and his two Sergeants were Sergeant Butson and Patterson. The Senior Sergeant intended that at 2230 hours when the night shift commenced duty that his staff would return to base to be re-rostered on foot patrol duties in the city. The staff were not re-rostered at that time because of the wet conditions and were reassigned to continue their mobile patrols.

John Berwyn Butson (JB7235)

- 3.27 Sergeant Butson is 39 years of age with 20 years Police service and has been a Sergeant for 18 months. Sergeant Butson worked the late shift until 2230 hours when he concluded his shift early as previously arranged with his supervisor. He was unaware of the incident until he commenced duty at 1500 hours on Sunday 28th November at fall-in where it was mentioned. Senior Sergeant Collins used the incident as a training opportunity with the staff in respect of vehicle stops.
- 3.28 During the Sunday shift Sergeant Butson spoke to some of his group staff about procedures and that the focus is to speak to drivers as they have control of the vehicle. He reported *"there was general talk though amongst some of the staff, that what the Commissioner did was wrong, that he shouldn't have interfered in the 3T"*.
- 3.29 Later on the Sunday evening, 28th November 1999, Sergeant Butson spoke to Constable Main and asked him about the conversation with the Commissioner. Constable Main did not reply. A comment was made by one of the other staff members but Constable Main still did not reply. Sergeant Butson withdrew from the conversation because he felt it may not be appropriate to continue with the conversation in front of the other staff. He knew that Senior Sergeant Collins had spoken to Constable Main so left it at that.
- 3.30 On Friday 3rd December he was in the Muster room when Constable Masters took a telephone call. The call was handed to him because it was Julie Roberts from the Holmes programme. He asked her what her enquiry was and he was asked to *"confirm or deny that the Commissioner of Police was spoken to by a patrol the other night"*. He enquired as to how much she knew about the incident and she was able to relate exactly what Sergeant Butson knew of it. She had the names of the Constables, the time of the incident and that the junior Constable had only been in

the job a few days and was concerned about the incident. Sergeant Butson told Roberts that he would enquire into her request and get back to her. He spoke with Senior Sergeant Collins and then further with Inspector Bailey and that was the last of his dealings with the incident.

- 3.31 As a matter of policy Sergeant Butson explains that every driver that is stopped should be breath tested and that was his general expectation that breath testing is standard when vehicles are stopped for traffic offences. However there is the discretion available to an officer not to breath test when there is clearly no reason for it.

Simon Robert Paterson (SP5657)

- 3.32 Sergeant Paterson is 42 years of age, has 23 years Police service with 18 months as a Sergeant. Sergeant Paterson was working the late shift on Saturday, 27th November 1999 along with Sergeant Butson but it was not until 1.45am that he became aware of the fact that Constable Main had had an interaction with the Commissioner of Police during the evening. He was aware that Senior Sergeant Collins was in the Muster room talking with the Constables about the incident.
- 3.33 On the following day he was present when the Senior Sergeant reiterated the procedures for conducting traffic stops. Sergeant Paterson can shed no further light on this matter.

Senior Sergeant Anthony Collins (ACE132)

- 3.34 Senior Sergeant Collins is 57 years of age and has previous service with the Traffic Safety Service before amalgamation with the Police in 1992 at the rank of Senior Sergeant. Advised that he was in the Watchhouse until 2230 hours on the evening of 27th November when he was relieved by the nightshift. He had previously arranged for his staff to assemble in the Muster room at that time for reassignment to beat duties. Due to the bad weather he decided to leave the staff on their mobile patrols and it was about this time that he was advised by Constable Haldane of their interaction with the Commissioner of Police earlier in the evening.
- 3.35 He obtained details from both Constables' Haldane and Main that the Commissioner's vehicle had been stopped because it had no lights on, that the red and blue lights had been used to stop the vehicle in Inglewood Place and that Constable Main had accidentally tripped the siren switch as he was getting out of the vehicle. He was advised that Constable Main had a conversation with the Commissioner. Constable Main told him that he was not actually sure of what had been said but during the conversation he recognised the person as being the Commissioner of Police. The only words that Constable Main was sure of at that time were words to the effect that the Commissioner had said that "*everything was alright*" before turning and walking back to his car. Constable Main told Senior Sergeant Collins he then saw the vehicle drive off with the headlights on.
- 3.36 Senior Sergeant Collins was unhappy with the fact that Constable Haldane had not taken charge and become more involved with the interaction as it was Constable Main's third day of duty. The Senior Sergeant could see that Constable Main was quite upset and described him as being quite withdrawn and believed that he was aware that he had "*blown his '3T'*" and got flustered and was still flustered following his dealings with the Commissioner.

- 3.37 The Senior Sergeant reiterated the procedures to be followed, that is to speak to the driver, establish the reason why the lights were not on and to determine the driver's state of sobriety, and depending on the circumstances obtain the drivers licence details and then to check out whether a verbal warning or traffic offence notice was required. He explained to Constable Main it was unfortunate that he was so new in the job to come across the Commissioner in these circumstances and it was expected he could be thrown by this experience. He told him not to worry, that mistakes are made but that we learn from them. He observed that Constable Main was still withdrawn and then he talked to Constable Haldane about his actions. He said that he spoke with Constable Main about his interaction with the Commissioner but that the Constable could not actually remember what was said. The Senior Sergeant conducted a relatively detailed interview with Constable Main and I refer the reviewer to this aspect of the Senior Sergeant's statement.
- 3.38 In his initial statement Senior Sergeant Collins records that on 1st December, 3 days later he advised the Area Manager, Inspector Grenfell, of the incident, however in a later interview on the 6th December he retracted that statement stating that he did call Inspector Grenfell but because he was on the telephone he did not get the opportunity to advise him and even though he spoke to him on the telephone later that day he was unsure about having advised the Inspector.

Other Witness Enquiries

- 3.39 There were two other avenues of enquiry that came to light on 7th December, that being through the actions of Constable Williams from Lower Hutu who advised that he had seen the Commissioner of Police in a restaurant in Wellington on Saturday 27th November.

Constable Karl Anthony Williams (KWG776)

- 3.40 Constable Williams is 27 years of age, stationed at Lower Hutu for the past 3 years, states that he had arrived with family at Uncle Changs restaurant in Courtenay Place, Wellington at about 7.45pm. Somewhere between 8.45pm and 9.15pm his mother identified the Commissioner of Police leaving the restaurant. The Constable turned and observed the Commissioner standing at the cashier desk and appeared to be paying a bill. In the same area he saw two females and made the assumption that they were in his company.
- 3.41 He believes he saw the Commissioner with his wallet out and that the Commissioner walked to the door and that was the last he saw of him.

Mr Jimmy Cheung

- 3.42 Enquiries with the restaurant owner Mr Jimmy Cheung and his Manager May Li disclosed that the Commissioner is known at the restaurant as he is a regular customer. May Li was at the Courtenay Place restaurant on 27th November but did not recall the Commissioner on that night being in the restaurant. The enquiry at that stage was focussing on the Commissioner having had a meal in the restaurant, however there were three transactions on eftpos at the appropriate time.

The Reporting Process

- 3.43 There were a number of Police members involved in processing the initial call that was made by Julie Roberts of the Holmes show on Friday 3rd December 1999. Her call was received in the Muster room at the Wellington Central Police Station somewhere around 1600 hours. The call was initially received by Constable Masters who passed the call directly to Sergeant Butson who then relayed the message to Senior Sergeant Collins and further on to Inspector Bailey, the Acting Area Manager on the day.
- 3.44 Kaye Calder, Media Services, Office of Commissioner, received a call from Inspector Bailey and as a result immediately consulted with Mr Michael Player, General Manager : Public Affairs, Office of Commissioner. Michael Player reports the request as being an alleged misuse of power when the Commissioner of Police had been stopped with no lights on the vehicle. He had a conversation with the Commissioner on the telephone and subsequently advised Deputy Commissioner Robinson soon after.
- 3.45 After speaking to the Commissioner, Mr Player instructed Ms Calder to prepare a brief statement in the Commissioner's name. He further instructed Ms Calder a short while later, after speaking to the Deputy Commissioner, to prepare another statement regarding the proposed enquiry. Whilst that was being prepared the Commissioner rang back advising him that he, the Commissioner, had spoken to the Deputy Commissioner and told Mr Player that he believed that the course of action being taken was appropriate.
- 3.46 The statement that was going to go out in the Commissioner's name was read to the Commissioner with the only significant point of clarification being about the night that the incident had taken place. Mr Player reports that the Commissioner indicated in his conversations with him that it could have been Saturday, Sunday, Monday or Tuesday night. The Commissioner did not think it was Saturday because he had been at home watching the Election results come in. He also eliminated Monday night because it was a Police Executive formal dinner. Michael Player suggested that the Commissioner might check with his partner on that point. A short time later the Commissioner rang back and advised that it was in fact Saturday night. That was the last interaction that Mr Player had with the Commissioner over the incident.
- 3.47 Both the Commissioner's and Deputy Commissioner's prepared news releases were provided to the 'Holmes' show. Some small modifications were subsequently made to the media release prepared for the Deputy Commissioner after a report went to air on the 6pm news on Saturday 4th December.

Nissan Maxima Vehicle XT5647

- 3.48 The vehicle in this traffic stop was a 1998 Nissan Maxima XT5647, colour blue, registered to the New Zealand Police, Molesworth Street. This vehicle is the contract vehicle for the Commissioner of Police. He has full private use of this vehicle.
- 3.49 On the night in question the vehicle was driven by the Commissioner's partner Robyn Johnstone and the Commissioner was in fact a passenger in the front seat. There were no other occupants in the vehicle at the time. Both occupants were interviewed on Friday 10th December, first interview commencing at 0830 hours with the driver and was followed at 1100 hours by Commissioner Doone. Neither party

was left on their own in the intermediary time and the Commissioner did not have access to the information from the interview with his partner.

Robyn Jean Johnstone

- 3.50 Robyn Johnstone is 41 years of age, she is the partner of Commissioner Peter Doone and she made her statement in the presence of Mr John Upton, QC. She advised that she had been home on her own on Saturday 27th November and that at about 5.30pm she went to a function at the Overseas Passenger Terminal (OPT). This was a function for the EDS Yacht Race. She arrived at about 5.30pm and drove the Nissan Maxima motor vehicle. She parked the car under cover at the OPT and it was raining lightly at the time. She had had a meal at home before attending the function.
- 3.51 She records that during the course of the function she had two or three glasses of white wine. She describes the glasses as being the small, plastic throw-away type and that they had not been full. She also states that she had some of the snacks that were passed around and that during the evening she had danced for a significant portion of it. She stated that Peter Doone did not dance with her for about two dances and that was when somebody else had asked her to dance. She stated that they left the function at about 10.30pm to go to Uncle Changs to get takeaways. She was challenged at interview as to the actual time, but still believed that the time was about 10.30pm.
- 3.52 In her statement she records a conversation with her partner, Peter Doone, about the amount of alcohol that she had consumed and that she felt she was alright to drive. She states it was dark and raining at the time. She confirms being familiar with the controls on the Maxima and that she was sure she had put the lights on. She travelled from the OPT to Courtenay Place and stopped outside the St James Theatre while Peter Doone alighted and went and ordered their takeaways at Uncle Changs. He came back to the car after a couple of minutes. She could not recall whether she had turned the motor off in the car or not during this period. She had intended staying where she was parked but due to the traffic build up and a bus having stopped at the bus stop she felt that she should not remain there so decided to move on.
- 3.53 Ms Johnstone travelled west along Courtenay Place intending to turn left into Taranaki Street and then right into Inglewood Place. She intended backing out of Inglewood Place and then travelling north on Taranaki Street. As a car had come into Inglewood Place behind her she changed her mind and travelled on down Inglewood Place. When she was two thirds along Inglewood Place Ms Johnstone noticed the car behind her was a Police car and it had the flashing lights activated. She indicated a left hand turn and pulled into the side of the road on Dixon Street. When she had stopped in Dixon Street she heard the siren of the Police car being activated for a second or so. She remained in the car with her seat belt on. She describes Peter Doone getting out of the car and leaving the passenger's door open. She did not discuss any conversation that took place only to say that she did not think he said anything, that it was usual for him to get out as he always greets his guys. She remained in the car, it was raining, and the rain on the back window had blocked her view. She was aware of the noise coming from the people in the vicinity because the passenger door was open.
- 3.54 After about a minute her partner Peter Doone came back into the car and said "*just a routine check, no problem*". She did not believe she made any response, they did not discuss it, she then completed her manoeuvre out into the traffic and departed.

- 3.55 Robyn Johnstone described her last 3½ years of employment with the Land Transport Safety Authority (LTSA) which ended in September 1999. In this role she had been on CBT checks with Police and was familiar with traffic safety issues.
- 3.56 Ms Johnstone stated that *"I have never had a car accident, I don't drink and drive."* She expressed surprise when confronted with the evidence that her lights had not been activated when she entered Inglewood Place. She stated that she had no recollection of turning her lights off while waiting in Courtenay Place and she also had no recollection turning them on in Inglewood Place as stated by Constable Main.

Peter Eric Charles Doone, Commissioner of Police

- 3.57 Peter Doone is 51 years of age, Commissioner of Police having 29 years service with New Zealand Police, holding the rank of Commissioner since 1 July 1996.
- 3.58 The Commissioner's initial comment when the media interest in this incident was brought to his attention by Mr Player on Friday, 3rd December 1999 has been commented upon above (paragraphs 3.6.4 and 3.6.5). In that conversation Mr Doone had difficulty recollecting the exact night this incident took place.
- 3.59 In an unsolicited memorandum dated 5th December 1999 addressed to the Deputy Commissioner, Mr Doone advises that he was a passenger in his vehicle on Saturday, 27th November 1999 in a small access street off Taranaki Street leading to Dixon Street, when they noticed flashing lights from a Police patrol vehicle. The vehicle was driven by his partner Robyn Johnstone. They pulled up in Dixon Street and he got out of the car to speak to the patrol as *"an instinctive and routine action by me as Commissioner"*.
- 3.60 He stated that whenever he meets Police in an operational setting that he is always proactive by speaking to them and introducing himself and that this was the reason for doing so that night. He reports approaching the Police officer and saying good evening and asking him if anything was wrong, to which the Constable replied that he was just doing a routine check. Mr Doone says he *"assumed this was purely a random 'turn over'"*.
[Note : A 'turn-over' is a term used by Police for a vehicle stop.]
- 3.61 Mr Doone reports that the Constable recognised him and made some comment like *"hello sir"* upon which he told the Constable that the car was his but he was not driving it. He said that he was the passenger and that his partner was the driver. At that point he says the Constable did not ask anything further but turned and went back to the Police vehicle. Mr Doone said *"goodnight"* and returned to his car. He went on to state that at no time did the Constable indicate that the stop was other than a routine check and that he did not regard it as anything else or in any way a traffic related incident. Mr Doone pointed out that the Constable had the option of speaking to the driver if he had wanted to but did not.
- 3.62 Finally he made a categorical assurance within that memorandum that there was no drink driving involved and that both he and his partner had played a leading role in road safety in recent years and always set an example in this respect.
- 3.63 In a written statement made on Friday 12th December 1999 Mr Doone advises that on Saturday 27th November 1999 he had been at the EDS Yacht Race commencing at

about 1.40pm which concluded at about 4.30pm. He had some food at the time and non-alcoholic liquid. He had one or two small bottles of Light Ice beer at the time of the official function and later during the evening he had two or three white wines and these had been in small plastic picnic glasses. He believed they were only small glasses. He had consumed the wine throughout the night, although mostly early in the evening and further, that he had had more water and juice through the evening than alcoholic drinks as he had been dancing.

- 3.64 When he and his partner left the function he describes Robyn Johnstone as having been the driver of the car, that it was dark and threatening to rain at the time, that there had been no decision to take a cab as it was not an issue. Ms Johnstone drove to and parked in Courtenay Place outside the St James Theatre. Mr Doone went into Uncle Changs Restaurant to place a takeaway order. He returned to the car as it was going to be about 10 minutes to fill the order. They then decided to go around the block. However on turning into Inglewood Place from Taranaki Street they became aware of a Police car behind them with its lights flashing. He recalled Ms Johnstone saying something but could not recall what. As they could not pull over in Inglewood Place they turned left into Dixon Street and pulled up immediately on the broken yellow lines. Mr Doone said he was unaware of any reason for them being pulled over but his first instinct was to get out and say hello and to see what the problem was, if any. He said he is always keen to introduce himself to his troops in an operational setting. That was the reason he got out of the vehicle.
- 3.65 Mr Doone describes the Police car as still being in Inglewood Place, more or less at a right angle to his parked car. That he carried on a conversation with the Police officer between the vehicles and believes there was some 4 feet between the Police officer and him. He describes asking the Constable "*is there anything wrong*" to which the Constable replied "*no, just a routine check*" or "*just a routine check*".
- 3.66 During the interview segments of the statement made by Constable Main were read to and by Mr Doone. Specifically the areas where Constable Main stated that Mr Doone said initially "*why have we been stopped*" and that Constable Main's reply was "*because you did not have your lights on and I would like to speak to the driver*". Mr Doone was categorical in saying that that was not what he said, for two reasons : (1) that he did remember what the Constable said and that was "*this is a routine check*"; and (2) that if the Constable had said the lights were off and he wanted to speak to the driver that it would have fundamentally changed how he approached the rest of the interaction. There was no road safety issue from Mr Doone's point of view and he had no issue about whether the Constable spoke to the driver or not, and in fact that issue did not come up. Mr Doone had assumed that it was purely a random "*turn over*" with no particular cause and his reaction was to let the Constable know whose car it was, who was driving and to say if there was anything further he wanted to know or do.
- 3.67 At that stage of the interview further segments from Constable Haldane's statement were read to and by Mr Doone including the portions where Constable Haldane stated that he heard Mr Doone say "*what have I done wrong, what have I done wrong*" in a surprised manner and that the conversation between Mr Doone and Constable Main took place at a distance of less than an arms length. Mr Doone's response was that he did not specifically remember the siren sounding but it may have. He stated that he did not personalise the comment but certainly did say "*is there anything wrong*". He states that he would not have used the word "*I*" as he was not the driver. He also disagreed with the distance between himself and

Constable Main as he maintained there were some feet between them, believing the confusion about the distances from Constable Haldane's point of view, was due to the angle of the Constable's view that may have made it appear that he and Constable Main were closer.

- 3.68 Mr Doone went on to say that after having told the Constable that it was his car, but he was not driving, he was reasonably sure that he pointed to the passenger door that was open at that stage and told the Constable that his partner was the driver. He then went on to say he waited to see whether the Constable *"wanted any more information or what he wanted us to do."*
- 3.69 Note : Independent witness Jonathan Cox in his statement (paragraph 3.25) reports Constable Main and Mr Doone *"within arms reach of each other"*. Cox also reported the Nissan front passenger door as being closed while both Ms Johnstone and Mr Doone state it was open.
- 3.70 Mr Doone stated that after he had given the basic information he left it over to the Constable to take it further. At that point of time a further segment of the statement made by Constable Main was read to and by Mr Doone that describes that Mr Doone stated that he had been out with a friend for a meal and that the Constable had stated that at no time did Mr Doone introduce himself as being the Commissioner of Police and that at the end of the conversation Mr Doone had used words to the effect *"we'll be on our way"* or something like that. The statement made by the Constable that he felt he could not approach the driver because of the position Mr Doone was standing in, and that the Constable felt intimidated was also put to Mr Doone. In response he stated that he did not say *"we'll be on our way"* but did after waiting for the Constable to ask questions or take further action say *"goodnight"* or *"have a good night"*. Both turned away and returned to their vehicles.
- 3.71 Mr Doone stated that he certainly made no attempt to stand in the Constable's way if he intended to speak to the driver and that he was standing behind his car not blocking the Constable in any way. That there was an easy path for the Constable to go and speak to the driver. Mr Doone believed that his conversation was polite and friendly and that he is easy going and has a relaxed manner even when speaking to junior staff. At no stage did he see the Constable carrying the alcotest breath testing device. He recalls getting back into the car and saying *"no problem, just a routine check, we can go"* or words to that effect. He believed that the lights of his vehicle had been on and had no knowledge that they were not. He believed that the time of 11.00pm made in his report to the Deputy Commissioner dated 5th December 1999 had been taken from the media interaction, but he had always felt it was earlier in the night that this took place because they were home to watch the substantial results from the Election process.
- 3.72 In conclusion Mr Doone made the following statement in his last paragraph : *"I now know there is a conflict between what the Constable says he told me specifically about stopping the car because the lights were off and wanting to speak to the driver, and my knowledge and what I remember about what happened. I am absolutely sure that my memory is accurate on this point and can only reconcile this difference by suggesting that due to fact [sic] that the Constable had just graduated from the College, and that he was taken by surprise by speaking to the Commissioner, he was confused over his recollection of what was said"*.

4 The Law

- 4.1 I have taken advice from the National Manager : Legal Services, Superintendent D B Kerr both on the 8th December when he provided an outline of the relevant law to enable Superintendent P Nickalls to prepare for his interview of the Commissioner. (That advice is attached).
- 4.2 Upon completion of the inquiries Superintendent Kerr had access to the complete file and on 12 December 1999 he prepared a written opinion on the issue of whether the Commissioner had committed a criminal offence. That opinion concluded that there was insufficient evidence to make a prima facie case of obstructing a Constable in the execution of his duty because there was no evidence of an intentional act or statement by the Commissioner that caused the Constable to freeze.

5 Training and Practice

- 5.1 For the reason that Constable Main had just graduated from the RNZPC on 12 November 1999, the training documentation reviewed and presented is that which the Constable had been subject to during his 22 week course. It is believed to be a relevant indicator of practice throughout the country by operational field staff. The Traffic Volume for the Manual of Best Practice has not as yet been completed and published in the Police 'On Line Library'.
- 5.2 Unit Four of the Recruit Training Programme covers Road Safety, Traffic, Evidential Breath Alcohol (EBA) and Vehicle Crash. Specifically the Traffic Law Powers encompassed in the Land Transport Act 1998, Section 114 are traversed as well as the Crimes Act Section 317A power to stop a vehicle for the arrest of an offender. The lesson notes are however silent on the powers to stop and search under a statutory search power (s.314B, Crimes Act 1961) and the power to search for stolen goods once a vehicle has been stopped pursuant to any lawful power (s.227A).
- 5.3 The EBA notes provide a comprehensive learning environment for powers and procedures. All recruits are afforded practical application of the law at Compulsory Breath Test (CBT) points where the Passive Breath Test Device is used to detect the presence of alcohol on drivers breath as a screening device.
- 5.4 The Driver Training for Police programme provides driving skills discussion and practical experience. Of note is a segment on patrolling, vehicle stop tactics, interviewing the driver and the power to require a driver to stop and give name and address. Practical experience is gained in real life terms with the public during this segment of their course.
- 5.5 Further application of this theory and practice is evidenced by the statements provided by Senior Sergeant Collins and Constable Haldane where both describe the discussions led at both fall in for all the Group as well as in person with Constable Main. They prescribe the process for breath screening all drivers stopped for traffic violations such as Constable Main confronted in Inglewood Place on the night of 27th November 1999.

6 Findings

- 6.1 The enquiry undertaken during the past ten days has brought together the facts reported above. These are supported by various statements and other papers which are also tendered with this report.
- 6.2 The first matter that I must turn my mind to, when considering these facts, is whether there is 'prima facie' evidence of a criminal offence by Mr Doone during the incident in the vicinity of Inglewood Place at approximately 2115 hours on Saturday 27th November 1999. I am assisted in this regard by an opinion tendered by Superintendent Kerr, National Manager : Legal Services on 12th December 1999.
- 6.3 I have traversed this area myself and find that I concur with Superintendent Kerr. I find there is insufficient evidence to make a prima facie case of obstruction against Mr Doone due to the lack of direct evidence that might illuminate the Commissioner's intent in his interaction with Constable Main.
- 6.4 My finding in this matter is a preliminary view that may yet be influenced by any further advice proffered by Crown Law. If my preliminary view of 'no prima facie case' in relation to any criminal offending by the Commissioner is supported by the Solicitor-General then I can set this aside. I am however required to further consider whether there are other implications of the Commissioner's actions that may require further consideration. One such potential further course of action is to refer this file and associated papers to the Police Complaints Authority for determination of issues falling within his jurisdiction.
- 6.5 In the interest of completeness I now traverse my findings in the disciplinary arena should such discussion become operative following a final determination in relation to any criminal offending. My motivation for adopting this course of action is to advance all aspects of this matter as expeditiously as is possible. It will allow any reviewer to comment if they deem that to be appropriate and facilitate a referral to the PCA in due course to satisfy my obligation to the Authority pursuant to his correspondence of 9th December 1999.
- 6.6 I must first turn to Constables Main and Haldane. Various external commentators, principally the media, have raised the question as to whether the Constables are the subject of my enquiry. Undoubtedly their actions, especially those of Constable Main, have been closely considered in this enquiry.
- 6.7 Constable Haldane was the senior officer in the Incident patrol that dealt with Mr Doone. As such he had some obligations and responsibilities. His delegation of the task to Constable Main to speak with the driver of the Nissan Maxima stopped in Inglewood Place was appropriate. He could have taken a more direct part in the 'traffic stop' when he recognised Mr Doone as the passenger in the vehicle given his knowledge that Constable Main had merely three days operational Police experience since graduating from the Royal New Zealand Police College. In the event he chose not to and this is unfortunate. Rather, he chose to discharge his responsibility by counselling Constable Main after the event. Constable Haldane did appropriately report the incident to his supervisors in a timely fashion.
- 6.8 Constable Haldane will now have a better appreciation of the potential that existed in this incident. Accordingly, for completeness only, I formally record that it is my view that Constable Haldane has been counselled by his immediate supervisors with

a view to future performance improvement should he ever confront a similar situation where there is a potential of compromise for any party to the event. This was an appropriate response by his supervisors immediately after the event. No disciplinary action is indicated or intended.

- 6.9 Constable Main is a recent graduate from the RNZPC with a mere three days operational service in Wellington District. He is a 32 year old with experience as a salesperson and outdoor pursuits instructor before joining Police. He is described as naturally quiet, mature and adopting a professional approach to his work.
- 6.10 The Constable was five hours into his shift. He observed an unlit vehicle being driven on an inner city street on a wet night after dark. He properly and lawfully acted to stop the vehicle. Indeed, not to have done so would have been neglectful. His statement indicates that he had a road safety focus and his objective in making the vehicle stop was to talk to the driver. That he took with him his passive breath testing device as he set out to speak to the car driver is indicative of his knowledge and commitment to the high priority of drink-driving enforcement upheld by Police. All his actions were appropriate.
- 6.11 It is easy to determine that Constable Main did not achieve the things he set off to accomplish when he made the vehicle stop. He did not speak to the driver. This meant he did not establish the circumstances and reason the vehicle was being driven without lights, an offence pursuant to Regulation 37(2) Traffic Regulations 1976 and Section 30 Transport Act 1962. He did not establish whether the driver was a licensed driver and whether she was carrying her licence as required by law. Neither was he able to form an opinion on the sobriety of the driver and determine whether he should require her to undergo a passive breath screening test.
- 6.12 It is unfortunate that Constable Main did not complete any or all of these tasks. Had he done so, then this matter would not have assumed the proportions it necessarily has. None of the escalation of this matter can however be attributed to Constable Main. He reasonably initiated a contact with a member of the public that developed in a way he could not have foreseen.
- 6.13 The question as to why Constable Main did not complete his task must be addressed. From my review of the facts I distill two principal reasons: that the Commissioner of Police intervened; and that an inexperienced Constable (Main) 'lost his way' when confronted by the Commissioner. These two factors in combination have brought about the circumstance that has necessitated this enquiry.
- 6.14 The only mistake Constable Main made was not to insist on speaking with the driver. This is understandable given the various descriptions provided of his demeanor during and immediately after his interaction with Commissioner Doone. He was shaken by the experience. His training was not yet sufficiently ingrained to ensure that he would not be diverted from the task he set out to complete. Constable Main was undoubtedly diverted from his stated intention of speaking with the driver and the reason for this was Commissioner Doone's intervention.
- 6.15 Constable Main properly reported the incident to his supervisors. They responded by providing counselling to ensure he complied with his obligations in policy and law to further road safety objectives when dealing with motorists. Constable Main is also required by his 'Oath of Office' to discharge his duty as a Constable "without fear or

favour, " irrespective of whomever he confronts. He has been appropriately counselled, no disciplinary action is indicated or intended.

- 6.16 I return now to the driver and passenger of Police contract vehicle, Nissan Maxima registered number XT5467.
- 6.17 The vehicle was driven by Ms Robyn Johnstone, partner of Peter Doone, Commissioner of Police. Ms Johnstone had driven Mr Doone from Oriental Bay to Courtenay Place and then onto where the car was observed without lights on Taranaki Street and subsequently stopped by Police in Inglewood Place. Ms Johnstone is a licensed motor vehicle driver.
- 6.18 Ms Johnstone in her statement of 10th December 1999 admits to consuming alcohol prior to driving. She states she had "two or three glasses of white wine", quantifying the amount consumed by stating "they were the small plastic picnic throwaway glasses". Nonetheless, the fact is, by Ms Johnstone's own admission she had been drinking prior to driving.
- 6.19 I have drawn the inference that Mr Doone was aware Ms Johnstone had been drinking alcohol prior to driving from his statement that he had made a judgement this was "*not an issue*". That Ms Johnstone had been drinking prior to driving is a matter upon which Mr Doone is largely silent in his statement of 10th December 1999. Mr Doone states Ms Johnstone met him at a social function at the Overseas Passenger Terminal, that they were together all night and spent a considerable portion of it dancing. He does state that "*she is responsible about drink driving*", and "*she was nowhere near the limit*", indicating a degree of trust in Ms Johnstone's judgement in relation to drink driving and that he had made an assessment of her sobriety.
- 6.20 Mr Doone also admits he had consumed alcohol at the social function he had attended. He stated variously that "*I had a couple of beers*"; "*I was drinking Light Ice*"; "*I would have had about two, probably one before and one after Robyn got there*"; "*I then changed to a white wine*"; "*they had those small plastic picnic glasses that are throwaways*"; and "*I would have had probably two to three of those small glasses through the night*".
- 6.21 Mr Doone and Ms Johnstone had snacks during the evening event. Ms Johnstone had eaten at home before joining Mr Doone at the OPT. Mr Doone had consumed a large roll during the boat race prior to the social event. On leaving the OPT they travelled by car to a Courtenay Place restaurant to purchase takeaway food before returning home. Ms Johnstone drove. They were eventually stopped by the Police patrol.
- 6.22
- 6.23 Mr Doone's statement is silent as to whether there was any discussion between them prior to Mr Doone alighting from their car to interact with Police. Ms Johnstone states "*I don't even think he said anything*" before exiting. As such, there is no

assistance from this quarter in determining what was in Mr Doone's mind in doing so.

- 6.24 That Mr Doone did leave the vehicle and speak with Constable Main has been well canvassed above and is not in dispute. Whilst there are some discrepancies the overall sequence of events can generally be characterised as Constable Main and Mr Doone leaving their respective vehicles and meeting in the space between the vehicles. A discussion ensued. Mr Doone says he enquired the reason for the stop. Constable Main believes he responded advising that the car had been unlit and he wished to speak to the driver.
- 6.25 There is some corroboration from Constable Haldane for Mr Doone's enquiry. The discussion between Mr Doone and Constable Main was not prolonged. There is no assertion of aggressive or overbearing behaviour on the part of Mr Doone. However, Constable Main recognised the Commissioner shortly after the start of their conversation and stated he "*felt intimidated*". Mr Doone acknowledges this recognition stating "*I could see through the expression on his face that he recognised me*". This I believe to be important as it places the interaction beyond a simple interaction between a Constable and a member of the public. It is an interaction between a junior and a senior officer of Police in which their respective duty status was of no relevance.
- 6.26 Constable Main, in his statement to Detective Inspector Wildon, was unequivocal in stating his purpose to Mr Doone for the vehicle stop and his subsequent intended actions. I do note that Constable Main's recollection later on the same evening of the interaction with the Commissioner, as reported by Senior Sergeant Collins, was less certain. The upset and emotion associated with this incident for Constable Main may explain this.
- 6.27 While many inferences could be made regarding Mr Doone's motivation in speaking to the Constable in the driver's stead I prefer to turn to the facts on this file. I must note however that many inferences and rumours have been raised by various media representatives during enquiries of my office in the past ten days. Invariably these inferences have centered on why the car driver was not subject to the usual breath testing procedures. This is unfortunate but is germane to my notification of the incident to the PCA as being "*of such significant public interest as to put at risk the reputation of the New Zealand Police*".
- 6.28 Mr Doone stated in an unsolicited report dated 5th December 1999 and tendered to me on Monday 6th December 1999 that he "*got out of the car to speak to the patrol. This was an instinctive and routine reaction by me as Commissioner. Whenever I meet Police in an operational setting I am always proactive, speak to them and introduce myself. This was the sole reason for doing so that night*".
- 6.29 Mr Doone in his report to me dated 5th December 1999 also states at paragraph 6 "*I did not regard it as in any way traffic related*". In his statement of 10th December 1999 he stated variously : "*I was unaware of any reason why they would want to pull us over but my first instinct was to get out and say hello to my staff and see what the problem was if any.*" "*....if I do see any of my troops in an operational setting I am always keen to introduce myself and see what is happening. That was the reason why I got out*". "*There was no road safety issue from my point of view that I was aware of and I had no issue about whether he spoke to the driver or not*". "*All the way through I had assumed this was a purely random 'turn over' with no*

particular cause and my reaction was to let the Constable know whose car it was and who was driving and see if there was anything further he wanted to know or do".

- 6.30 I am not able to accept Mr Doone could reasonably believe "there was no road safety issue" giving rise to the vehicle stop.
- 6.31 Similarly, while the stated motive of Mr Doone in proactively interacting with staff in an operational setting may be appropriate in many settings I find it to be inappropriate when Mr Doone or a close associate, in this case his partner, is dealt with by on-duty Police in the execution of their duty. In the latter circumstances the potential for compromise, or for the generation of the perception of compromise is significant.
- 6.32 Clearly, from the evidence garnered during this enquiry there were road safety issues which initiated the vehicle stop and which determined the further actions the Constables should undertake. I form the view that these matters were not taken to their logical and reasonable conclusion because of Mr Doone's intervention.
- 6.33 I have considered whether Mr Doone or any other Police officer holding rank in the New Zealand Police has any obligation or duty to ensure or insist that these reasonable further actions should occur. Anecdotally officers have described being stopped by on-duty Police for speeding offences. That the on-duty officer has been equivocal about issuing an Infringement Offence Notice for the offending, and the offending officer has insisted such a notice be issued. I believe such insistence to be entirely appropriate and affirms the ethical stance of both officers.
- 6.34 Mr Doone adopted a less definitive position in this incident. In his report of 5th December he states at paragraph 6 "*He had the option of speaking to the driver if he had wanted to but did not*". In his 10th December statement he stated "*After he had recognised me and I had given him the basic information I left it over to the Constable to take it further*".
- 6.35 There is no legal obligation or duty that required Mr Doone to insist that Constable Main speak to Ms Johnstone, the driver of his car. Integrity guidelines do not exist that may have provided reference for Mr Doone at the time of this incident or for me to weigh his actions against subsequently. Senior officials that I have consulted during this enquiry have asked whether there is any requirement for an officer to formally report an incident where they or a close associate is spoken to by an on-duty officer. There is not. I have resolved that this matter will be given urgent consideration by the National Manager, Internal Affairs, Office of Commissioner.
- 6.36 I do form the view that the benign approach adopted by Mr Doone once he had intervened with Constable Main and was aware Constable Main had recognised him was inappropriate. While there was no direct obligation, a prudent assessment of the situation could have suggested an alternate course where Mr Doone insisted on the 'full treatment' for the driver to dispel any later suggestions of insobriety.
- 6.37
- 6.38 Mr Doone in his memorandum to me dated 5th December 1999 states "*I can give you a categorical assurance however, that there was no drink driving involved*". -This is

revisited in his statement to Superintendent Nickalls of 10th December 1999 when he states *"I had no concerns about Robyn driving. She is responsible about drink driving. That was not an issue for me throughout this. She was nowhere near the limit"*.

- 6.39 On her own admission Ms Johnstone, the car driver had been drinking before driving. The inference I take from Mr Doone's statement *"she was nowhere near the limit"*, is that the fact Ms Johnstone had been drinking was known to him. I set his earlier assertion of 5th December 1999 aside as not being supported by these facts.
- 6.40 There are discrepancies between the recorded version of this event provided by the on-duty Constables and Mr Doone. Many of these are understandable given the expected differing recollection of persons involved in any incident and being required to record details almost two weeks later. Other witnesses provide a degree of corroboration to both versions.
- 6.41 I do note that Constables Main and Haldane had been on duty for over five hours and were sober. Mr Doone and Ms Johnstone had been in a social setting for over four hours and on their own admission had consumed alcohol, albeit in a modest quantity.
- 6.42 All these factors combine to create a very difficult circumstance. Put simply, the Commissioner and his partner had been drinking alcohol in a social setting. They chose to drive home with Ms Johnstone driving. At some stage she drove without lights which attracted the attention of a Police patrol. They properly stopped the car. It was the Constable's intention to speak to the driver about her unlit vehicle and determine her sobriety. The Commissioner intervened and the Constable did not speak to the driver. The news media became aware of the incident, undoubtedly from Police sources. This has been reported in both the electronic and print media. It is in the public domain. That it has not been more widely reported or debated publicly has, in my view, only been constrained by the initiation and conduct of my enquiry. There has been significant ongoing media enquiry.
- 6.43 Road Safety is a strategic and key result area for government and Police. Drink driving enforcement is a critical plank in this area. The events in Inglewood Place on or about 2115 hours on 27th November 1999 call into question the integrity of the New Zealand Police as characterised by the actions of Mr Doone, whatever his motive, and Constables Main and Haldane. Further, they cast doubt on the sincerity of the road safety messages conveyed to the public by the New Zealand Police and our partner road safety agencies. This is entirely unfortunate.
- 6.44 I find that Commissioner Doone's interactions were inappropriate. At the stage he intervened with Constable Main he had no obvious constructive contribution to make to the event. He could have merely remained a passive passenger allowing Constable Main to deal with the driver, Ms Johnstone, as all the indications were that he intended to, according to Police best practice. An alternate option available to Mr Doone was to insist that Constable Main tested the sobriety of Ms Johnstone. He did neither.
- 6.45 These matters are distressing for the potential they have to impugn the perception of the integrity of individuals and the New Zealand Police. I have determined that no disciplinary action is indicated in respect of both Constable Main and Constable Haldane. I also note that the opinion of the Solicitor-General dated 8th December

1999 is that the Commissioner of Police is not subject to discipline pursuant to the Police Regulations. It is not within my mandate to take this matter further other than to tender these papers and my findings to the Solicitor-General and Police Complaints Authority for review and consideration.

A handwritten signature in black ink, appearing to be 'R. J. Robinson', written over a horizontal line.

R. J. Robinson
Deputy Commissioner