



**IPCA**

Independent Police Conduct Authority  
Whaiia te pono, kia puawai ka te tika.

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17 May 2010

Mr Chris Watson  
P O Box 336  
PICTON 7250

Dear Mr Watson

**Complaint about Operation Tam**

1. I write in response to your complaint about Operation Tam, the Police investigation into the disappearance and murders of Ben Smart and Olivia Hope on 31 December 1997 in the Marlborough Sounds.

**The Complaint**

2. In 2000 you have raised concerns about two aspects of Operation Tam. These involve a witness who gave evidence at the trial of your son, Scott, in August 1999, known as 'Witness A' and an affidavit sworn by Detective Inspector Pope on 18 February 1998. The circumstances leading to your complaints and the nature of your complaints are detailed further below.
3. On 4 November 2000 *The New Zealand Herald (Herald)* published an article which detailed alleged impropriety by the Police in their involvement with a witness who was referred to throughout Scott's trial as 'Witness A'.
4. Two reporters from the *Herald* interviewed Witness A. During the interview Witness A apparently recanted his evidence given at Scott's trial and made serious allegations against the Police officers who had interacted with him during the relevant periods.
5. Quite apart from the suggestion that he had committed perjury, the essence of Witness A's comments to the reporters was that:-
  - Police bought, or otherwise improperly acquired, false testimony from him;
  - Several crucial inaccuracies were included in his statement without his knowledge; and
  - Police pressured him to give evidence by using pending parole as leverage.
6. On 14 November 2000, following significant publicity regarding the evidence given by Witness A, the Police Complaints Authority initiated an investigation into the conduct of Detective Sergeant Fitzgerald who was a member of the Operation Tam Suspects Team.

7. On 17 November 2000 Mr Clark wrote on your behalf to the Authority to express your concerns about the conduct of Detective Sergeant Fitzgerald and to indicate your desire to participate in the Authority's investigation. That investigation was completed in early 2001.
8. As you know, similar concerns about Witness A were raised by Keith Hunter in his book, *Trial By Trickery*, and in letters of complaint written by him to Deputy Commissioner Pope and to the Authority.
9. With the commencement of this new investigation by the Authority into the complaints made by Mr Hunter, investigators had cause to return to your original 2000 complaint. I note that you met with the Authority's investigator, Bob Grinstead, on 14 April 2008 and he acknowledged that you had not received the Authority's conclusions and findings from the original investigation. This lengthy delay in notification is regrettable. Please accept my apologies.
10. Mr Hunter has also raised concerns about 'Witness B'. Similar concerns appeared in an article in the *New Zealand Woman's Weekly* of 4 December 2000. It is alleged that Witness B was facing serious criminal charges at the time he gave evidence at Scott's trial and, in exchange for his false testimony, Police arranged for him to receive a more lenient sentence.
11. The Authority has expanded its investigation to consider the position of Witness B and considers it is important to advise you of the Authority's findings in respect of that witness.
12. Witnesses A and B were both granted name suppression, but neither was provided with formal witness protection. Witness A was the subject of stringent Court directions, which protected him for very practical reasons. Those points aside, there was nothing secret about his involvement with the Crown case. Disclosure was undertaken by the Deputy Solicitor General and there was no adverse comment from either defence counsel or the presiding Judge on this aspect.
13. The other aspect of your complaint about Operation Tam concerns an affidavit sworn by Detective Inspector Pope on 18 February 1998. It is alleged that affidavit contained false statements of fact. Mr Hunter has also raised concerns about Detective Inspector Pope's affidavit. The Authority's findings as to those aspects of the affidavit that have been the subject of complaint follow below.

#### **The Authority's Investigation**

14. Under its governing Act, the Independent Police Conduct Authority Act 1988, the Authority's role is to consider questions of Police conduct and neglect of duty, and matters relevant to Police policies, practice and procedure. The extent of the Authority's jurisdiction is thus circumscribed by its statutory limits, and it is important to emphasise that it is not open to the Authority to itself re-investigate a criminal investigation, or to re-litigate issues determined by due process in the Courts. Therefore, any matter that was determined at Scott's trial or during his subsequent appeal is not within my jurisdiction. It is however the Authority's role to examine and make findings about the adequacy or integrity of a Police investigation leading to a prosecution and to make recommendations about Police policies, practices and procedures.
15. In investigating your complaints the Authority has conducted an extensive, indeed exhaustive, review of Operation Tam, which is one of the largest Police files compiled in New Zealand's criminal history. That investigation has involved many hundreds of hours of input by experienced investigative staff and legal analysts. Some 25,000 documents have been examined in the process. I am satisfied that the investigation has been thorough and detailed and its findings are soundly based.

16. In particular, the Authority's investigators have been provided with all relevant material from the Police files concerning witnesses A and B, including copies of their video interviews. The Authority has conducted its own enquiries and interviewed both witnesses A and B and Detective Sergeant Fitzgerald. The evidence given in Court by both Witnesses A and B has also been considered. The fact that Witness A had a criminal history and had been through a stressful period in his personal life (including being arrested) prior to being interviewed by the *Herald* reporters was appreciated from the outset of the Authority's investigation. With that in mind, it was decided to interview a number of people who had involvement with Witness A both before, during and after the trial period. While you were not interviewed, I understand that you were spoken to.
17. I record also that I have not interviewed or examined Scott in the course of the investigation. I also note that the Authority has not received any complaint from Scott himself about the Police conduct of his case: the only complaints this office has received are those from yourself and from Mr Keith Hunter.
18. Whilst Scott made a number of brief statements to Police early in the investigation he did not make a statement on arrest and nor did he give evidence at his trial. His election to remain silent, as is his right, means there is no version of events from him. It is however always helpful to hear from a person at the centre of accusations, particularly where the movements of that person, the timing of his movements and the reasons for his movements were critical issues that might benefit from explanation.

#### Witness A

19. In relation to the witness known as Witness A at Scott's trial, it is suggested that Police 'bought', or otherwise improperly acquired, false testimony; that several crucial inaccuracies were included in his statement without his knowledge; and that Police pressured Witness A to give evidence by using pending parole as leverage. These allegations were first published on 4 November 2000 in the *Herald*, in an article in which Witness A apparently recanted his evidence given during Scott's trial.
20. By way of background, in October 1998 Witness A informed Police of alleged comments Scott had made to him while they shared a prison cell at Addington Prison. Witness A disclosed this voluntarily at a time when he was being interviewed about an unrelated matter. His claims were not followed up until 7 April 1999, at which time Detective Sergeant Fitzgerald met with him. Before taking a statement from him, the Detective Sergeant arranged for Witness A to receive independent legal advice from a lawyer whom the Witness trusted. On 18 May 1999 Witness A gave a statement and later also gave evidence at Scott's trial. By that time he was a sentenced prisoner. The decision to call Witness A at Scott's trial was that of the Crown prosecutors rather than Police. Witness A was rigorously cross-examined by defence counsel on his evidence at trial and the judge gave an appropriate caution to the jury concerning his evidence.
21. After publication of the article in the *Herald*, Police visited Witness A and offered the opportunity to recant his trial evidence by way of sworn affidavit or sworn evidence. He chose not to do so.
22. Witness A was subsequently interviewed as part of the Police Complaints Authority's investigation in November 2000, in the presence of his barrister and a kaumatua. Witness A told the Authority's investigators that at the time he spoke to the media and had appeared to recant his evidence, he had done so out of "depression and anger". He said he did this because he believed Police had not done enough for him in terms of his personal safety and security and he had felt let down by Police. However, he told the Authority that what he had originally said to Police and repeated in his evidence at trial had been the truth. He further

said he had received no benefit from giving evidence: on the contrary, his life had been more difficult as a result.

23. On the basis of the foregoing there is no evidence on which to conclude that Police officers involved in Operation Tam pressured Witness A to give false evidence; or that they included an inaccurate account of his version of events in the statement he made in May 1999. Nor is there any evidence that Police acted in an unlawful or improper way in terms of their interaction with Witness A before, during, or after he gave evidence at Scott's trial.
24. Witness A was granted parole on 1 September 1999, having become eligible for parole on completing two-thirds of his sentence. Police did not make submissions on his application for parole, nor did they influence the Parole Board's decision. Witness A was arrested again later in 1999. The Authority has reviewed that prosecution file and is satisfied there was no link between A's subsequent arrest and Operation Tam.
25. On 5 December 2000 you met with one of the Authority's staff in Blenheim. You expressed concern about a comment made by Detective Sergeant Fitzgerald which indicated that Witness A had expressed considerable concern regarding his personal safety if he were to give evidence at Scott's trial. You felt this was somewhat at odds and did not sit comfortably with information that Witness A was talking to others in prison about being a potential witness. In the circumstances I do not believe there was anything unexpected or particularly unusual about Witness A's concerns as expressed.

#### **Witness B**

26. In relation to the witness known as Witness B at Scott's trial, it is suggested he gave false testimony in exchange for Police arranging for him to receive a lenient sentence in respect of serious criminal charges Witness B faced at the time.
27. On 29 July 1998 Witness B gave a video statement to Detective Sergeant Fitzgerald in which he alleged Scott had made various confessions to him when they shared a cell at Addington Prison. At the time of giving the video interview, Witness B was being held at Blenheim Police Station for a depositions hearing in relation to alternative charges arising from a domestic incident, viz. injuring with intent to cause grievous bodily harm and male assaults female. The hearing was to have commenced the day before but on that date Witness B had pleaded guilty to the lesser alternative charge following withdrawal of the grievous bodily harm charge.
28. The Detective Sergeant told Witness B during the interview that he could not do anything for him in relation to his case. Witness B accepted this. There was no other discussion regarding any arrangement. Witness B spoke freely to the Detective Sergeant in the video interview, relaying what he claimed Mr Watson had revealed to him. The Detective Sergeant's advice that there would be no deals was repeated by him on two later occasions to two different solicitors representing Witness B.
29. The Detective Sergeant did not have any discussions with the detective in charge of the depositions hearing on 28 July when the more serious charge was withdrawn and the plea taken. Nor did he speak with the prosecutor. The acceptance of Witness B's plea of guilty to the lesser alternative charge was consequent upon a sworn statement made by his partner retracting the most serious allegations she had made. She also subsequently wrote to the sentencing Judge in similar vein.
30. The allegation that Witness B gave a false video statement in exchange for Police arranging for him to receive a lenient sentence in respect of the charges he was facing is not therefore sustainable.

31. By the time Witness B gave evidence at Scott's trial there were no outstanding charges pending against him. He also was subjected to rigorous cross-examination by defence counsel over the possibility of some 'deal' having been struck with Police prior to him giving evidence. He steadfastly denied those allegations. Significantly, the Detective Sergeant who interviewed him was not cross-examined at all on those issues. It was never put to him that Police had obtained Witness B's co-operation in exchange for any inducements or promises to intervene in the charges he was facing. In his summing up the Judge cautioned the jury very specifically in relation to Witness B's evidence and directed them to have regard to the considerable amount of reduction of charges, bail and other benefits he allegedly received.

32. Like Witness A, Witness B was interviewed as part of a Police Complaints Authority investigation in January 2001. At that time Witness B told the Police Complaints Authority:-

'One thing I am quite positive about is that my giving a video statement to the Detective had absolutely nothing to do with the assault charge being reduced. They were two completely separate issues. When I spoke to the Detective he made it very clear to me that he could do nothing for me in relation to the charges I faced and he never changed from that. I also made it quite clear that I was not speaking to him about Scott Watson for that reason - I just wanted to tell him about my knowledge of Scott Watson. There was absolutely no discussion with the Detective or any other Police Officer about my assault charge being reduced in exchange for telling about Watson. It simply did not occur.'

'Any suggestion that there was a 'deal' done to get the charge reduced is incorrect. ... There is no way a 'deal' was done and I resent anyone even suggesting that occurred.'

'There is no way I got any advantage from the Police for making the statement to the Detective and later giving evidence. My life has never been the same since, with allot [sic] of hassle from the media and others. Sure I got a car and a cell phone for a while - but that was just for our protection because we lived in a rural area. There was definitely no advantages to either me or my family.'

33. As noted by Witness B, he was given a vehicle and a mobile telephone for a short period after he was released from custody (this was reported by the *New Zealand Woman's Weekly* on 4 December 2000), due to his genuine fears about his and his family's safety as a result of him testifying. This was the subject of considerable cross-examination during Scott's trial.

34. Operation Tam documents confirm that the arrangements regarding the vehicle were undertaken overtly. The situation was well documented and an official agreement was entered into by Witness B and the Police Commissioner's office.

35. I do not find anything untoward in terms of the arrangements put in place, nor was there anything untoward in relation to the reduction in the charge faced by Witness B in July 1998. The account given by the detective investigating the assault allegation is corroborated by an analysis of the prosecution file and by Witness B himself.

36. There is no evidence that Police acted in an unlawful or improper way in terms of their interaction with Witness B prior to, during, or after he gave evidence at Scott's trial. Witness B received no advantage for assisting the Crown case. On the contrary, he had to endure media intrusion and adverse comments from associates.

37. At your meeting with one of the Authority's staff in Blenheim on 5 December 2000 you expressed the following additional concerns:-

- that Detective Sergeant Fitzgerald had arranged payment of \$25,000 in 1998 to a witness in an unrelated case;

- that Detective Sergeant Fitzgerald made what you felt were unfounded comments during Scott's trial that you and your family would interact with gang members in the manner suggested by him; and
  - that there had been late disclosure to defence counsel in Scott's trial.
38. The concern about a payment being made to a witness in another case has no bearing on the Authority's investigation into Operation Tam and it need not be taken further. Having said that, I appreciate the context in which you raised the point; namely that it was a factor to be taken into account during the course of the investigation.
39. I appreciate you believe Detective Sergeant Fitzgerald's comments about you and your family during the course of his wider evidence were unnecessary and upsetting. While I appreciate you took exception to the comments, they represented the Detective Sergeant's view based on information he had obtained during the course of the investigation and there was no judicial criticism of him for making the comments.
40. The suggestion of delay in disclosure to the defence was the subject of considerable attention by the Authority. This issue has not been raised by any other party and there has been no adverse comment from either defence counsel or the judiciary on the point. I am satisfied that no Police officer was in any way involved in delaying disclosure and there is nothing untoward in terms of the Crown fulfilling its obligations in this case.

#### **Detective Inspector Pope's Affidavit**

41. Both you and Mr Hunter have raised various concerns about the contents of an affidavit sworn by Detective Inspector Pope on 18 February 1998. The affidavit was filed to obtain interception and search warrants. It is alleged that the affidavit contains multiple false statements of fact.
42. The concerns you have raised were addressed in a report prepared by Detective Inspector Ross Pinkham in 2008. Detective Inspector Pinkham's report was in turn reviewed by Assistant Commissioner Gavin Jones, and this review was in turn independently reviewed by Philip Morgan QC.
43. The complaints relate to an affidavit presented initially to the High Court in Wellington on 18 February 1998 and subsequently presented a further four times to support the issue and renewal of interception warrants.
44. Assistant Commissioner Jones found that the affidavit did contain errors but that these were drafting errors. He concluded the errors did not adversely affect the overall integrity of the affidavit; that there was no evidence of any intention to mislead the Courts; and no basis on which to conclude Detective Inspector Pope had sworn the affidavit knowing that any part or parts of it were false or misleading.
45. The Authority has reviewed the affidavit, Detective Inspector Pinkham's report, Assistant Commissioner Gavin Jones's review, Philip Morgan QC's review and the source documents relied on by Police in preparing the affidavit and has formed its own conclusions.
46. Discussion on the various issues of concern raised follows.
47. The affidavit records that David Mahony, skipper of the *Mina Cornelia*, woke at 5.30am on 1 January 1998, saw that the *Blade* had departed, and that Scott Watson had left behind a fender. In fact, Mr Mahony said he woke at about 8am. It was another witness, Warwick Eastgate, who said he woke at 5.30am and saw the *Blade* had gone. The affidavit was,

however, correct in recording that Mr Mahony noticed the fender had been left behind. I accept Assistant Commissioner Jones's conclusion that the reference to Mr Mahony waking at 5.30am was a drafting error.

48. The affidavit records that Scott "claims to have been clean-shaven" on New Year's Eve / 1 January 1998. There is no formal record of any Police interview with Scott in which he made such a comment. There are Police documents which refer to such a comment, and a detective contacted by Assistant Commissioner Jones can recall the comment being made by Scott. Assistant Commissioner Jones concluded that Detective Inspector Pope believed on reasonable grounds that Scott reported to have been unshaven. In the absence of any formal record it is not possible to determine whether in fact the statement was made and to whom. In the absence of any formal record of such a statement by Scott, the inclusion of this point in the affidavit is questionable.
49. The affidavit refers to 23 witnesses having described 'the 'third person', believed to be Watson, as unshaven'. It has been suggested this comment inflated the number of witnesses who were able to identify the 'third person' and ignores photographic evidence showing that Scott was clean-shaven. On examination it is clear that the relevant witness statements provide various descriptions of Scott as having some kind of facial hair. Some of these witnesses knew Scott, others were introduced to him on New Year's Eve. The statement that 23 witnesses described Scott as unshaven is in my view reasonable. On the other hand eye witness evidence is notoriously unreliable, hence the rationale for the direction given to juries in cases where identification evidence is critical, as was the case in Scott's trial.
50. The affidavit records that Scott had endeavoured to mislead Police by changing his appearance since New Year's Eve 1998. In forming this conclusion, the Police relied upon (a) apparent differences between the descriptions provided by the 23 witnesses referred to above and Scott's subsequent appearance, and (b) statements by people who knew Scott in January 1998 and said he had changed his appearance since they had last seen him. It is alleged that this was contrary to photographic evidence. Witnesses who saw Scott on New Year's Eve made various comments about his hair – some describing it as short, others as medium length, and some as straggly, unkempt or untidy. There is no conclusive determination possible from these statements, as to whether Scott's appearance changed from longer hair on New Year's Eve to shorter hair later. The witnesses who said in January 1998 that Scott had changed his appearance had not seen him on New Year's Eve and, indeed, for some time before that. Their statements could not be relied on to support the view that Scott endeavoured to mislead Police by changing his appearance. Consequently, such a view could not be accurately stated and this paragraph should not have been included in the affidavit.
51. The affidavit records that witnesses aboard *Bianco* and *Mina Cornelia* 'described Scott's behaviour when he arrived in Endeavour Inlet at about 4pm on 31 December 1997 as normal' but that there was then 'a deterioration in his conduct following consumption of alcohol and drugs to such an extent that by 10pm on 31 December 1997 he had become obnoxious'. The witnesses aboard *Bianco* had only fleeting contact with Scott as he arrived at Endeavour Inlet and did not comment on his behaviour; they next saw him at about 3am when he boarded *Bianco*. At that stage one of the witnesses expressed concern about his behaviour. It was, therefore, inaccurate to record that "each" of the witnesses described deterioration in Scott's behaviour, and also to attribute to the witnesses the view that 'by 10pm... he had become obnoxious'.
52. The affidavit records that photographs showed *Blade* rafted to another vessel, *Mina Cornelia*, on the evening of 31 December 1997 but that a further photograph taken:-

'at about 6am on 1 January 1998 shows the vessel, the 'Mina Cornelia', but Watson's yacht, the 'Blade' can no longer be seen.'

53. It has been suggested that the photograph, a panorama of the inlet, was taken later than 6am. This is based on two other yachts which left after 6.30am and also were not visible in the photograph. The person who took the photograph said: 'I woke at about 6am. I went on deck and took some photographs of the bay'. It was reasonable for Detective Inspector Pope to rely on this recollection. I note that other witnesses also noted *Blade* had left before 5.30am, whereas Scott's first statement to Police claimed that he had left at 7am.

54. The affidavit records that:-

'The water taxi driver, Guy Wallace, and passengers on the *Naiad* at approximately 4am on 1 January 1998, Morressey and Dyer, described a person of similar description to Scott Watson as being dropped off the water taxi in the company of Olivia Hope and Ben Smart near where Scott Watson's yacht was rafted.'

55. Ms Dyer provided no such description and Mr Morressey's description was incomplete. Guy Wallace described several features consistent with Scott but some that were not. Assistant Commissioner Jones found that Ms Dyer should not have been quoted as having said anything about Scott being dropped off by the water taxi, and that this reference to her was most likely a drafting error. He found that the other statements were:-

'sufficiently proximate to Scott Watson to justify inclusion in the affidavit, albeit that there are some variances in the descriptions.'

56. In the Authority's view it was reasonable to state that Wallace had provided such a description; however Mr Morressey's description was not sufficiently complete to justify the statement that he had "*described a person of similar description to Scott Watson*".

57. The affidavit records that:-

'Timothy George Harvey and Jeremy Vincent Grant Brown have given an account of watching a yacht of a similar description as Scott Watson's leaving Endeavour Inlet at approximately 5am on 1 January 1998.'

58. Both witnesses describe a single-masted yacht with a light at the top of the mast, mainly white above the water line, and was not large (one statement) or about 40-feet long. One witness states that he had seen 'before and after' photographs of *Blade* and 'it does look like the type of boat that I saw'. It has been suggested that these descriptions were too general to be regarded as being of 'similar' description to *Blade*. However, based on the statement from the witness who saw the photograph of *Blade*, and the fact that the statements of the two witnesses are largely consistent, the conclusion that they saw a yacht 'of a similar description as Scott Watson's' is reasonable.

59. In *R v Sanders* (1994) 12 CRNZ 12 Fisher J made the following observations about the requirements for an application for a search warrant. The principles apply equally to the present context:-

'The evidence provided by or on behalf of the applicant is normally to be provided in writing (s 198(1)) but in appropriate cases it can be provided orally and recorded in writing at the time of delivery (s 198(6)). Section 198(1) makes it plain that the facts are to be drawn from sworn evidence. "Sworn" in this context means that there must be an assertion of personal belief accompanied by an oath given in accordance with the requirements of ss 3, 4 and 15 of the Oaths and Declarations Act 1957. The applicant is not confined to evidence which would be admissible in a Court of law (*Auckland Medical Aid Trust v Taylor* [1975] 1 NZLR 728 at p 735; *Rural Timber Ltd v Hughes* [1989] 3 NZLR 178 at p 183) but the very fact that the statute requires sworn evidence



indicates that the deponent must expressly or impliedly assert his or her personal belief in the truth of the primary facts to which he or she is deposing. Normally when a deponent asserts particular facts, the context will justify an inference that he or she has personal knowledge of the facts asserted. If the context suggests otherwise, and some other reliable foundation for the deponent's belief is not given, the bald assertion will normally carry little or no weight. Much will depend, however, upon the context and the inherent likelihood of the facts asserted. The ultimate test of the evidence is whether the applicant has provided the judicial officer (a District Court Judge, Justice or Registrar (not being a constable)) with reasonable ground for belief in the elements necessary for the issue of a warrant.'

'On the subject of beliefs, it is important to distinguish between the role of the applicant and that of the judicial officer. The applicant has the twofold task of requesting a warrant and providing sworn evidence. As already noted, the fact that the evidence must be sworn indicates that the deponent must have a personal belief in the primary facts alleged in the affidavit portion of the application. And as with most determinations of a quasi-judicial nature, there will be nothing to prevent a search warrant applicant from going on to make submissions, or perhaps even to express personal opinions, with respect to the ultimate issues. Nor would any particular harm be done in this context if these submissions or opinions were expressed on oath. But strictly speaking, the role of a non-expert witness is to give evidence as to primary facts, not evidence as to the conclusions to be drawn from those primary facts. There is nothing in s 198 which requires the applicant to express an opinion as to the ultimate issues upon which the issue of a warrant will turn, still less that such an opinion be expressed on oath. It is for the judicial officer, and the judicial officer alone, to decide what conclusions should be drawn from the evidence as to primary facts provided by or on behalf of the applicant. Only the judicial officer has to decide whether that evidence provides reasonable ground for belief with respect to the ultimate issues.'

60. Philip Morgan QC observed in his review that a series of important points relevant to Detective Inspector Pope's affidavit emerge from this passage from *Sanders*, as follows:-

- The evidence is directed to provide reasonable grounds for a belief by the Judicial officer considering the application;
- The evidence offered need not be admissible in a Court of law;
- The evidence may be either the deponent's personal expression of belief or the expressions of belief of other Police officers with which he agrees; and
- The purpose of the affidavit is to provide primary evidence from which the Judicial officer can draw conclusions as to the ultimate issues but there is no bar to the affidavit containing personal expressions or belief as to the ultimate issues or submissions.

61. The Authority also observes the particular importance of Police maintaining high standards in the preparation of an affidavit in support of a search or interception warrant application. The invasive nature of such warrants and the fact that applications for them are invariably made on an *ex parte* basis, requires absolute meticulousness in ensuring both factual accuracy and reasonableness of views expressed in supporting affidavits.

62. As a result of the errors described above, the affidavit as a whole falls short of the high standard of accuracy required of Police when applying for warrants to search or intercept private communications. The affidavit was the product of combined information supplied by various members of the Police team. That would not be unusual or unexpected in such a situation. Its preparation was in Christchurch and overseen by a legal adviser. Detective Inspector Pope, as deponent, was dependent on accuracy on the part of others who supplied the information for the affidavit's contents. As deponent, Detective Inspector Pope

had to attest to the truthfulness of those contents and rely on them as a sound basis for the views he expressed.

63. As stated above, Assistant Commissioner Jones also found the affidavit contained errors but that these were drafting errors and did not adversely affect the overall integrity of the affidavit; that there was no evidence of any intention to mislead the Courts; and no basis on which to conclude Detective Inspector Pope had sworn the affidavit knowing that any part or parts of it were false or misleading. I concur with his finding that there is no evidence that the Detective Inspector swore the affidavit knowing any part of it to be false or misleading. As I have said, he was reliant on the advice of others in that regard. It is now impossible to say whether any individual contributor to the affidavit intended to mislead or was merely careless or insufficiently analytical of the facts he or she was contributing to the affidavit. What the unfortunate errors do highlight, however, is the need to strive for the highest degree of accuracy in relating any facts as known, by all persons responsible for contributing material to an affidavit. The errors also highlight the need for the commissioned officer who swears an affidavit to which others have contributed, to rigorously question the veracity of the material on which he or she is required to base his or her expressions of belief.
64. Notwithstanding the criticisms above, on a reading of the affidavit as a whole and without the criticized passages, there is ample evidence to support Detective Inspector Pope's expressions of belief and on which a judicial officer would grant the applications as sought.
65. The Court of Appeal has since delivered the decision in *R v Williams* [2007] 3 NZLR 207 (CA) which provides clear guidelines about the nature of material to be included in affidavits.

#### Conclusion

66. As to Witnesses A and B, contrary to what has been suggested, there is no evidence that Police acted unlawfully or improperly in their interaction with either witness prior to, during, or after each gave evidence at Scott's trial. Whilst the use of 'secret witnesses' is always fraught with obvious risk those risks are usually exorcised through challenge at any subsequent trial, as was the case here.
67. As to Detective Inspector Pope's affidavit, I find there are errors in the affidavit, which cause the document as a whole to fall short of the high standard of accuracy required in applications for warrants to search or intercept private communications. There is, however, no evidence that Detective Inspector Pope, or any other officer intended to mislead the Court; nor is there any evidence that when Detective Inspector Pope swore the affidavit he knew that any part of it was inaccurate. The errors do not strike at the heart of the affidavit; nor render its central purpose false. Singly or cumulatively, they do not constitute misconduct or neglect of duty by Detective Inspector Pope or any other person responsible for compiling the affidavit.
68. I record that neither the Police Complaints Authority nor the Independent Police Conduct Authority has ever received a complaint from Scott. Scott has never given a definitive statement about the matters raised and the Authority has not interviewed him. Similarly, I record that Scott has not sought to challenge his conviction before the Judicial Committee of the Privy Council on the basis that there has been a miscarriage of justice not been rectified by the High Court or the Court of Appeal.
69. I understand there has been an application made pursuant to s.406 Crimes Act 1961 for a referral back to the Court of Appeal. The Authority has no details of that.
70. I also understand that some individuals have continued to investigate and gather information regarding possible ketch sightings during the relevant period and have communicated those to Police. Police is the appropriate agency for referral of any potential new evidence. It is

worth repeating that the Authority's jurisdiction is confined to considering questions of Police conduct and neglect of duty, compliance with policies, and matters relating to Police practice and procedure; in this case, during Operation Tam. It is not open to the Authority to conduct criminal investigations.

71. Finally, I wish to apologise again for the failure by the Authority to report the findings of its investigation into your complaints, completed in 2001, to you at that time.

Yours faithfully



The Hon Justice L P Goddard  
Chair  
INDEPENDENT POLICE CONDUCT AUTHORITY

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

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