paragraph 77). On this basis it was not unreasonable for Police to form a view that the man on the jetty and the mystery man were one and the same.

99. Although Messrs Cowan and Doolan differed somewhat in their description of the man involved in the dive shed incident, there was a reasonable basis for Detective Inspector Pope to accept Mr Cowan's identification of Scott Watson. Mr Cowan had several interactions with Scott Watson during the night. His sighting of Scott Watson by the juke box at the Furneaux Lodge bar was corroborated by other witnesses and by Scott Watson himself. In the dive shed incident it was Mr Cowan who spoke with the couple. Mr Doolan acknowledged that he 'didn't pay much attention to the pair'. I note that Messrs Cowan and Doolan both gave evidence at Scott Watson's trial.

100. **Finding:** Based on Messrs Cowan and Doolan's statements and from the many other witnesses interviewed, it was not unreasonable for Police to form a belief that the man involved in the dive shed incident, the man on the jetty, and the mystery man were the same person. Furthermore, Police did not publish any insinuation that identified Scott Watson. The published statement was reasonable based on the evidence of a large number of witnesses.

Rumours about Mr Watson and Mr Wallace

101. It is alleged that Police spread a rumour that Scott Watson and Guy Wallace were friends and that this allegation, although untrue, was highly influential.

102. Police did investigate whether Scott Watson and Guy Wallace were friends. Both were asked about their relationship, and others were asked if they had seen them together. Under the circumstances, Police would have been remiss had they not considered the possibility and made appropriate enquiries. Ultimately Police confirmed there were no links between the two men. The line of inquiry did not become public due to the Police. Guy Wallace chose to comment on it in the media.

5. The Strategic Lie

103. It is alleged that Detective Inspector Pope deliberately told the press and the public that Scott Watson was not a suspect, whilst telling journalists unofficially that Scott Watson was the prime suspect and spreading false and defamatory rumours about his character; his purpose being to create a situation where the press could identify, attack and malign Scott Watson without risking 'sub judice' contempt of court proceedings. This is said to have been a 'strategic lie', which resulted in Scott Watson being subjected to a five month 'trial by media' during which he had neither the right, nor the means, to effect a defence.

104. The allegations concerning rumours about Scott Watson's character are addressed above. I address the other aspects of this complaint below, including by reference to the sub judice rule, the Police's media strategy during the investigation, and the requirements of the Manual in dealing with the media during an investigation.

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The sub judice rule

105. The *sub judice* rule prevents comment about a matter from the time charges are highly likely or imminent. An individual may offend the rule and be held to be in contempt of court, if they act so as to create a real risk of interference with the administration of justice – in this case, a fair trial (see *Gisborne Herald Co Ltd v Solicitor General* [1995] 3 NZLR 563).

106. Early in the inquiry Detective Inspector Pope said publicly that Police had "no suspects, only witnesses". He also said that to label someone a suspect "you need to have a solid base of relevant facts." On other occasions he referred to having "potential suspects", and as late as 18 April 1998 he denied Police were focused on a single suspect. It was not until 12 May 1998 that he publicly conceded Operation Tam was a homicide, as opposed to a missing persons inquiry.

107. In support of the allegation that Detective Inspector Pope confirmed 'off-the-record' that Scott Watson was the main suspect, you have referred to a ***thesis*** written by the journalist Cate Brett. Ms Brett records that "Off the record ... Rob Pope told a select few journalists that Watson was their man". Ms Brett also records that Detective Inspector Pope refused to provide confirmation of this and that other senior journalists were frustrated that Detective Inspector Pope would not provide confirmation. Ms Brett records that Detective Inspector Pope's actions reflected the Police need to preserve all evidence for any future criminal trial.

108. Ms Brett further comments that Detective Inspector Pope "did allow a number of journalists (including the writer) into his confidence during the inquiry". She does not state what information was provided in confidence. It is known that one journalist received off-record confirmation (albeit not necessarily from Detective Inspector Pope) about the focus of a search of the Picton dump. You also assert that journalist Cate Brett and other members of the Press were advised of Scott Watson's imminent arrest. However, the Authority's investigation has found no evidence to support such an assertion.

109. **Findings:** It is clear, both from Ms Brett's writing and the Authority's investigations, that the relationship between Detective Inspector Pope and the media was strained during the investigation, precisely because the Mr Pope refused to confirm that Scott Watson was a suspect, or to disclose information that might compromise the investigation or any subsequent trial.

110. On the rare occasions when Detective Inspector Pope did provide background information to reporters, he did so on the clear understanding that he could trust them not to publish or broadcast the information; not, as has been suggested, on the opposite understanding that media would publish or broadcast the information. The dominant theme of Ms Brett's writing is the difficulty arising from Detective Inspector Pope's policy of limiting the information he provided to the media, on or off the record, to ensure that anything published did not derail the investigation or any future trial.

111. The media had many other means of obtaining information, including confirmation that Scott Watson was a suspect. They had access to witnesses, to Ben's and Olivia's families, to the Watson family and legal team, and to

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other members of the Marlborough Sounds community. In this situation Police cannot be held responsible for what the media chose to publish. This is highlighted by the fact that much of what the media published, including continued speculation about the mystery ketch and about Guy Wallace's identification evidence, undermined the case against Scott Watson rather than strengthening it unfairly. As already observed in paragraphs 72 and 72, this was a small community at the centre of a very major investigation experiencing unprecedented levels of media interest.

112. Police did not have sufficient evidence to charge Scott Watson until after May 1998, meaning that until this time the *sub judice* rule could not apply. There is no evidence of Detective Inspector Pope seeking to pre-empt the application of this rule by 'feeding' prejudicial material to the media in advance of any charges being laid.

Police Media Strategy

113. In a briefing note issued on 23 January 1998, Detective Inspector Pope commented that a "careful media management strategy" had been put in place, which required "extreme care' to be taken in making public statements due to the 'immense' public and media interest in the case". This document is said to be evidence of an intention on the Detective Inspector's part to lie strategically so as to feed media with prejudicial material and thus deny him the chance of a fair trial. The briefing note contains no comment to that effect; nor can any such comment be read into it. The facts establish that Detective Inspector Pope made several comments, both publicly and in Police documents, to the effect that he was concerned over media speculation about the case, in particular because of the potential for media coverage to interfere with evidence about identification of the person with whom Ben and Olivia were last seen.

114. As well as refusing to name Scott Watson as a suspect, Detective Inspector Pope also:-

- sought to prevent the broadcast of a *One News* item in which Guy Wallace was shown poor quality footage of Scott and asked if he was the 'mystery man' and replies "I'd have to say no";
- complained about the item once it was broadcast and sought an apology from TVNZ to, among other people, *"the owner of the sloop";*
- sought legal advice on what action could be taken to prevent media coverage that might be prejudicial or might hinder or obstruct justice;
- sought name suppression for Scott Watson when he was arrested on an unrelated charge of stealing a dinghy in Northland (notably, Scott Watson's counsel did not seek name suppression in relation to this); and
- repeatedly criticised journalists throughout the investigation for actions that could have compromised the identification process, including re-interviewing witnesses and speculating about the direction of the investigation.

115. A Police briefing paper on the dinghy theft noted that the publication of Scott Watson's name "could create extreme unfairness to him". It continued:-

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"the investigation has gone to great lengths in order to protect the Police interest in WATSON and permit a fair trial being conducted in the event that he is charged. The media have gone to equal lengths to jeopardise this by their exceedingly pernicious reporting even to trying to identify him in public".

116. **Finding:** In these circumstances there is no basis to the suggestion that Detective Inspector Pope embarked upon a course of lying strategically to the media in order to malign Scott Watson's character or to prejudice any subsequent trial of Scott Watson; in fact the evidence suggests the reverse.

Police Manual of Best Practice (1997)

117. The Manual defines a 'suspect' as a person who Police wish to interview in relation to an offence, and distinguishes a 'suspect' from a witness or victim. The Manual urges Police to avoid using the term 'suspect' for people who may be routinely eliminated from the inquiry, and to avoid specifying a number of suspects in case this causes confusion as people are eliminated from the suspect list. In a comment published in mid-February 1998, Detective Inspector Pope defined 'suspect' more narrowly, stating that 'to have suspicion you need to have a solid base of relevant facts.'

118. The Manual states that any release of information to the media must be in the public interest (as opposed to being for "infotainment"), contain no errors, be clearly understood, say all that should be said, consider the requirements of the legal process and not prejudice any subsequent trial. The Manual recommends against Police commenting 'off the record' and says Police should only make comments they are happy to have published or broadcast and attributed to them. The Manual also notes that when information given to media is 'limited' "journalists will find alternative sources of information and rumour will spread".

119. **Finding:** Detective Inspector Pope's actions and his public comments are entirely consistent with the view that he remained extremely concerned throughout the inquiry by media speculation and identification of Scott Watson; and that he sought to avoid any statements that might compromise the investigation or prejudice any subsequent trial. There is no evidence of a 'strategic lie', or of a breach of the *sub judice* rule, or of the Manual. Detective Inspector Pope did not publicly name Scott Watson as a prime suspect. To have done so would not only have been entirely inappropriate and prejudicial to Scott Watson's interests but also contrary to Police guidelines.

120. In conclusion, there is no evidence of misconduct in Detective Inspector Pope's dealings with the media during Operation Tam; nor any evidence that he set about creating a situation in which the press could identify, attack and malign Scott Watson without breaching the 'sub judice' rule and risking contempt of court proceedings.

6. False Information in Sworn Affidavit

121. It is alleged that Detective Inspector Pope swore multiple false oaths in an affidavit filed to obtain interception and search warrants.

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122. Scott Watson's father, Chris Watson, has previously raised similar concerns. These 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.

123. 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.

124. 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.

125. 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.

126. Discussion on the various issues of concern raised follows.

127. 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.

128. The affidavit records that Scott Watson "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 Watson 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 Watson. Assistant Commissioner Jones concluded that Detective Inspector Pope believed on reasonable grounds that Scott Watson 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 Watson, the inclusion of this point in the affidavit is questionable.

129. 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 Watson was clean-shaven. On examination it is clear that the relevant witness statements provide various descriptions of Scott Watson as having some kind of facial hair. Some of these witnesses knew Scott Watson, others were introduced to him on New Year's Eve. The statement that 23 witnesses described Scott Watson as unshaven is in my view reasonable. On the other hand eye witness evidence is

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notoriously unreliable; hence the rationale for the direction given to juries in cases where identification evidence is critical, as was the case in Scott Watson's trial (see above). Other issues relating to the identification of Scott Watson have been earlier addressed elsewhere.

130. The affidavit records that Scott Watson 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 Watson's subsequent appearance, and (b) statements by people who knew Scott Watson 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 Watson 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 Watson's appearance changed from longer hair on New Year's Eve to shorter hair later. The witnesses who said in January 1998 that Scott Watson 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 Watson 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.

131. The affidavit records that witnesses aboard *Bianco* and *Mina Cornelia* 'described Scott Watson'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 Watson 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 Watson's behaviour, and also to attribute to the witnesses the view that 'by 10pm... he had become obnoxious'.

132. 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.'

133. 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 Watson's first statement to Police claimed that he had left at 7am.

134. The affidavit records that:-

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> '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.'

135. Ms Dyer provided no such description and Mr Morresey's description was incomplete (see above). Guy Wallace described several features consistent with Scott Watson but some that were not. Assistant Commissioner Jones found that Ms Dyer should not have been quoted as having said anything about Scott Watson 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.'

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

137. 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.'

138. 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.

139. 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,

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> 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.'

140. Philip Morgan QC observed in his review that a series of important points relevant to Detective Inspector Pope's affidavit emerge from this passage, 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.

141. 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.

142. 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

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

143. 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.

144. 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.

145. 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.

7. Secret witnesses

146. It is alleged that Detective Inspector Pope 'bought' the testimony of two prison inmate 'secret witnesses' by offering them favourable treatment in return for giving false evidence that Scott Watson had confessed to them in prison.

147. In relation to the witness known as 'Witness A' at Scott Watson'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 *New Zealand Herald*, in an article in which Witness A apparently recanted his evidence given during Scott Watson's trial.

148. In relation to the witness known as 'Witness B' at Scott Watson's trial, it is suggested that 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.

149. Witnesses A and B were both granted name suppression, but neither was provided with formal witness protection.

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150. 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, the Detective Sergeant who interviewed those witnesses, and others who had an involvement with Witness A. The evidence given in Court by both Witnesses A and B has also been considered.

Witness A

151. In October 1998 Witness A informed Police of alleged comments Scott Watson had made to him while they shared a prison cell at Addington Prison. Witness A disclosed this when he was being interviewed about an unrelated matter. His claims were not followed up until 7 April 1999, at which time a Detective Sergeant met with him. The Detective Sergeant arranged for Witness A to receive independent legal advice from a lawyer he trusted. Witness A gave a statement on 18 May 1999 and later gave evidence at Scott Watson's trial when he was a sentenced prisoner. The decision to call Witness A 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.

152. After the publication of the article in the *New Zealand 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.

153. 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 said that when he had spoken to the media and had appeared to recant his evidence, he had done so out of "depression and anger". He said this was 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. 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.

154. On the basis of paragraphs 149 and 150 there is no evidential basis 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 Watson's trial.

155. 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.

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Witness B

156. On 29 July 1998 Witness B gave a video statement to a Detective Sergeant from Operation Tam in which he alleged Scott Watson 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 A had pleaded guilty to the lesser alternative charge following withdrawal of the grievous bodily harm charge.

157. The Detective Sergeant from Operation Tam 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.

158. 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 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.

159. The allegation that 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.

160. By the time Witness B gave evidence at Scott Watson'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 the 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.

161. Like Witness A, Witness B was interviewed as part of a Police Complaints Authority investigation in January 2001. 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

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> 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.'

162. 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 Mr Watson's trial.

163. 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.

164. 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.

165. 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 Watson's trial in 1999. Witness B received no advantage for assisting the Crown case. On the contrary, he had to endure media intrusion and adverse comments from associates.

8. Coercion of 'Mr Erie'

166. It is said that Detective Inspector Pope coerced a witness (Mr. Erie), who had been found by Police to have 250 cannabis plants, into giving false evidence by threatening his access to his children and promising that he would be charged only with cultivation of cannabis if he complied. It is further said that Detective Inspector Pope approved for publication a report that Mr Erie had been charged with possession for supply as a 'cover-up'.

167. The facts relevant to this allegation are as follows:-

- On 14 January 1998 Police executed a search warrant at a property in Erie Bay. The live-in caretaker, referred to as 'Mr Erie', occupied the property

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with his two children. Police recovered 250 cannabis plants at the property and interviewed Mr Erie and his children about Scott Watson's movements on 1 and 2 January 1998;

- Mr Erie was subsequently arrested (on an unknown date) and appeared in the Blenheim District Court on 12 March 1998. He was charged indictably with cultivating cannabis and remanded to appear again on 7 April 1998. As conditions of bail Mr Erie was to telephone Picton Police on Mondays, Wednesdays and Fridays and was to reside at Erie Bay;
- On 7 April 1998 Mr Erie appeared in the Blenheim District Court and indicated he would plead guilty. An application was made for Mr Erie to be remanded to the Wellington District Court. On 15 April 1998 Mr Erie appeared in the Wellington District Court. He pleaded guilty and was remanded to 15 May 1998 for sentence. Bail was to continue.
- Ultimately Mr Erie was convicted and sentenced to nine months imprisonment, suspended for two years. He was ordered to complete 200 hours community service.
- The sentence imposed was subsequently reported inaccurately in the *Marlborough Express* as a sentence of 2000 hours of community service. A book by John Goulter recorded inaccurately that Mr Erie had been charged with 'possession for supply' and had been given 'a two-year suspended sentence'.
- Mr Erie changed his evidence to Police on several occasions throughout the investigation as to the time Scott Watson sailed into Erie Bay on 1 January 1998. On 14 January 1998, he gave the time as between 10am and 12pm; on 16 January 1998 as being after 1pm; on 23 January 1998 as approximately 3pm; on 12 March 1998 as being after 4.10pm; and on or about 18 March 1998 as being after 5pm – this time was given in relation to a New Year's Day horserace run that day at 5pm. Mr Erie was a long-term cannabis user and heavy drinker. This may have affected his recollection. His recollections were also prompted by his children.

168. 'Mr Erie' is now deceased. His true name and his children's names are suppressed from publication.

169. It is alleged in *Trial by Trickery* that Police coerced Mr Erie into changing his evidence about the time Scott Watson arrived at Erie Bay (by offering a lesser charge in relation to the cannabis plants) so that the evidence would fit the theory that Scott Watson disposed of Ben's and Olivia's bodies in Cook Strait before arriving in Erie Bay on 1 January 1998. It is also alleged that Mr Erie's sentence was such that he was effectively 'let off' and suspicion is raised as to the true reason for the transfer of the charge to Wellington.

170. The Authority has investigated these allegations by reviewing the relevant components of the Police's physical and electronic files, legislation, case-law and other material concerning sentencing trends for the cultivation of cannabis at the time and by interviewing persons involved in the prosecution of Mr Erie.

171. There is no evidence to support the allegation that Police attempted to entice or coerce Mr Erie to change his evidence to support the Crown case, either in

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return for a 'reduced' charge, or for some other reason. I am satisfied the detective assigned to Mr Erie acted professionally at all times, and that there is no evidence of misconduct in the relationship between Police and Mr Erie. I address the specific aspects of this allegation below:-

- It is alleged Mr Erie was told to expect eight to ten years in prison in relation to the cannabis cultivation and that access to his children might be under threat. The allegation is based on unsubstantiated hearsay evidence which has been investigated by Police. There is no evidence that Police made any such threats.
- Telephone call transcripts of calls made by Mr Erie after the cannabis plants were discovered provide no evidence of there being any deal with Police. In fact, the transcripts indicate nervousness on Mr Erie's part as to what might occur as a result of the cannabis plants having been found.
- There is criticism of the detective assigned to Mr Erie for visiting and interviewing him on 26 February 1998 and for speaking with him at the Blenheim District Court before Mr Erie's appearance on 12 March 1998. The detective has explained he spoke with Mr Erie having just obtained evidence about the timing of the horse race which Mr Erie had bet on and remembered watching before Scott Watson's arrival in the bay.
- The reason why Mr Erie was not charged immediately on discovery of the cannabis plants on 14 January 1998 is queried. There is evidence that Police were still deliberating as to whether to charge Mr Erie on 26 January 1998; there is no evidence, however, that Police were considering not arresting Mr Erie in exchange for his co-operation.

172. It is not the case that a charge of cultivation is a 'lesser' charge than a charge of possession for supply. Mr Erie was charged indictably (although sentenced summarily) with the cultivation of cannabis. Police followed the normal practice at the time, based on the number and size of the plants located, in charging Mr Erie with cultivation of cannabis. The Court of Appeal subsequently observed in *R v Gillian* [2006] 2 NZLR 781 that cannabis which is under cultivation should not be the subject of a charge of possession for supply, or possession for sale.

173. The sentence imposed on Mr Erie was a matter for the Court. I am satisfied, however, that the sentence imposed (nine months' imprisonment suspended for two years and 200 hours community service) was appropriate in the light of the applicable sentencing principles at the time of the offending.

174. Similarly, I am satisfied that there is nothing of concern arising out of the transfer of the charge to the Wellington District Court. The transfer was made by Mr Erie's counsel, who was based in Wellington. The desire to save Mr Erie additional costs and concern that there might be prejudice to Mr Erie if he was sentenced in Blenheim (due to rumours circulating in the area that he had been charged with murder) were the motivating factors behind the application for transfer.

175. It is alleged that Detective Inspector Pope approved the inaccurate comments noted above as to the charge and sentence imposed on Mr Erie, contained in a book by John Goulter as a 'cover-up'. There is no basis to this allegation.

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The charge and sentence were matters of public record. There would have been no benefit to Police attempting to cover-up the true position in the manner suggested.

176. Finally in relation to Mr Erie, it is alleged that Police failed to disclose to Scott Watson's defence team evidence concerning Mr Erie's TAB account that had been obtained under a search warrant. The evidence was disclosed and made available to the defence and consequently there is no basis to this allegation.

9. *Blade* Duration Test

177. It is said that Detective Inspector Pope did not test the duration of a voyage by Blade from Cook Straight to Erie Bay because he knew it would contradict any case against Scott Watson. Specifically, It is said in *Trial by Trickery* that:-

> 'In order to succeed, the Crown case needed to supply a scenario which accounted for the disposal of the bodies and for the inability of the Police to find them. The scenario had to have sufficient time for Scott Watson to have disposed them in secret and in a place where he could expect that they could remain unfound.'

178. On 20 February 1998 speed tests of *Blade* were conducted to determine whether *Blade* could travel faster than 3 knots per hour, being the maximum speed claimed by Scott Watson. The test established *Blade* could travel faster than claimed.

179. There is no record of Police considering a reconstruction of the Cook Strait to Erie Bay journey, and no evidence that Police regarded the journey as pivotal to the investigation or to any subsequent prosecution. Such a reconstruction would in any event be of very limited evidential value because it would not be possible to replicate the winds, currents, tides, weather and other conditions applying on New Year's Day 1998. It is also highly unlikely that the reconstruction postulated in this case would have been admissible in evidence. In assessing the relevance and probative value of reconstruction evidence, a court must consider e.g. whether the evidence is able to accurately replicate the conditions in the case: *R v Kingi* (HC) Palmerston North, CRI-2005-054-305, 17 February 2006, Wild J); and whether the evidence effectively recreates an entire event or series of events: *Stratford v MOT* [1992] 1 NZLR 486

10. DNA contamination

180. It is alleged that there may have been contamination of evidence in that hairs recovered from a 'tiger' blanket seized from *Blade*, which were identified as belonging to Olivia, may have been 'planted'; or that poor Police practices may have resulted in accidental cross-contamination. Four possible scenarios are advanced in support of this allegation as follows:-

- The hairs were planted by Police;
- Laboratory errors resulted in contamination;
- The hairs came to be on the boat due to secondary transfer; and

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- The hairs did not come from Olivia.

181. On 10 January 1998 samples of Olivia's hair were taken from her home and on 14 January 1998 Police took possession of the tiger blanket from Blade. I am satisfied from the evidence before the Authority as to the chain of custody for both the sample hairs and the blanket and consider they were held securely by Police and laboratory analysts throughout the investigation.

182. It is suggested that Police should have counted the hairs taken from Olivia's home. There was no obligation for Police to count the hairs and, indeed, guidelines discouraged such a practice as it would increase the risk of contamination. The detective acted appropriately in the manner in which he collected and secured the sample.

183. There is no evidence that Police deliberately contaminated the evidence by placing Olivia's hairs on the blanket, either while the blanket and sample hairs were within the custody of Police, or once the exhibits had been sent to the laboratory. There is also no evidence of 'secondary transfer' of evidence having occurred. I note that such matters could have been advanced at trial if there was any evidential foundation to them.

184. The Authority does not have jurisdiction over the laboratory scientists involved in the investigation. Nevertheless, I record that there is no evidence that laboratory scientists deliberately, or accidentally, contaminated the exhibits, nor any suggestion as to how contamination could have occurred.

Conclusion

185. Operation Tam was a major investigation involving a large number of Police officers throughout New Zealand. Police were required to identify and track the movements of more than 100 vessels and more than 1600 people. The Police file was, at the time, believed to be the largest in New Zealand history.

186. The circumstances of the investigation made eye witness identification extremely difficult, yet vital. There is a vast amount of research indicating that eye witness identification is fraught with difficulty[3] and in Operation Tam these difficulties were magnified by the circumstances of the disappearance (at night, and after people had consumed alcohol), and by the atmosphere of rumour and almost unprecedented and intense media speculation surrounding the investigation.

187. In these difficult circumstances, some actions of Police fell short of best practice, and at their most serious, had the potential to influence witnesses. I have noted where this was the case. It is alleged these failings amount to a deliberate and systematic attempt to skew the evidence towards a pre-determined outcome; and that this approach was endorsed by laboratory scientists (by planting evidence), the trial Judge and the Crown prosecutors at Scott Watson's trial and the three appellate Judges who heard Scott Watson's appeal.

[3] the Law Commission's 1999 paper *Total Recall: the Reliability of Witness Testimony*

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188. An alternative explanation is that, in a major investigation conducted under intense pressure in a very difficult environment and involving a large number of Police officers, mistakes were made, and that these were compounded by the actions of others, in particular the media and members of the community who openly discussed the investigation with each other and with reporters. The evidence supports this interpretation.

189. I record that many of the issues raised, including as to photograph identification, DNA samples, Police handling of witnesses, prejudicial media coverage, the identity of the 'mystery man', the existence of the ketch, and scenarios for disposal of the bodies, were available to Scott Watson's defence team to raise at trial and on appeal. The conduct of the trial and appeal are not matters within the Authority's jurisdiction.

190. I record that neither the Police Complaints Authority nor the Independent Police Conduct Authority have ever received a complaint from Scott Watson. Scott Watson has never given a definitive statement about the matters raised and the Authority has not interviewed him.

191. Similarly, I record that Scott Watson 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 which has not been rectified by the High Court or Court of Appeal. Such appeals commonly arise where 'fresh evidence' is said to exist that was not called at trial. The guiding principles for the admission of fresh evidence were re-stated by the Court of Appeal in *R v Bain* [2004] 1 NZLR 638. There, the Court of Appeal held that an appellant who wishes to adduce evidence that was not called at the trial must demonstrate that the new evidence is sufficiently fresh and sufficiently credible. The overriding test is that it must be in the interests of justice for the evidence to be admitted. Similarly, the Supreme Court held in *R v Sungsuwan* [2006] 1 NZLR 730, per Elias CJ that:-

> '[7] Where, as here, the basis of the ground of appeal is that relevant and admissible evidence was not called (whether because it was not reasonably available at trial or because counsel did not choose to call it), the effect of its absence will have to be assessed. The context may include the cogency of the evidence not called, the other evidence at trial, any additional evidence likely to have been elicited in response had the evidence been called, and any risk to the defence in calling the evidence.'

192. As stated in paragraph 9, I do understand there has been an application made pursuant to s.406 Crimes Act 1961 for a referral back to the Court of Appeal. There Authority has no details of that.

193. I understand that Maritime Research Group (NZ) and you have continued to investigate and gather information regarding possible ketch sightings during the relevant period and have communicated those to Police. That is appropriate agency for referral of any potential new evidence.\. It is worth repeating that the Authority's jurisdiction is confined to 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.

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Yours faithfully

The Hon Justice L P Goddard
Chair
INDEPENDENT POLICE CONDUCT AUTHORITY

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