8 March 1993

Minister of Police
Minister for State Services
State Services Commissioner

Constitutional Relationship Between Commissioner of Police and the Minister of Police

Background

1. The relationship between the Minister of Police and the Commissioner of Police with respect to the power of the former to give binding directions to the latter raises the issue of the extent of the independence of the Police. For many years it has been accepted that 'operational' decisions made by the Commissioner are for that person and no other. Administrative matters may to a greater or lesser extent properly be the subject of such directions.

Comment

2. Whatever the constitutional arguments might be for asserting that the Minister or Ministers collectively through Cabinet may exercise a power of binding decision making respect at least of administrative and policy matters the position in New Zealand appears to be:

   (a) The Commissioner is an independent statutory officer acting with original not Ministerially delegated authority in respect of law enforcement decisions in a particular case. The Commissioner cannot lawfully be made subject to ministerial directions in this regard and is bound only by the duty to act lawfully himself in exercising his powers.

   (b) The Commissioner thus may not be subject to binding policy directions in respect of the enforcement of the criminal law in any particular area or type of offending. It is entirely a matter for the Commissioner to direct a law enforcement strategy in respect of types or places of crime.

   (c) It is not of course open to the Commissioner to refuse to enforce the criminal law or any aspect but the Commissioner has a wide discretion on the chosen manner of enforcement in a particular instance.

   This principle was expressed recently by the House of Lords as follows:

   > "By common law Police Officers owe to the general public a duty to enforce the criminal law: See *R v Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 2 QB 118 that duty may be enforced by mandamus, at the instance of one having title to sue. But as that case shows, a chief officer of Police has a wide discretion as to the

> manner in which the duty is discharged. It is for him to decide how available resources should be deployed, whether particular lines of enquiry should or should not be followed and even whether or not certain crimes should be prosecuted." (*Hill v Chief Constable of West Yorkshire* [1989] 1 AC 53, 59)

While in this area Ministers have a legitimate interest in ensuring the Commissioner acts according to law questions usually arise in litigation between the Police and citizens.

(d) Decisions on what law enforcement resources are to be deployed in particular cases and general reasonable policy directions are to be made in classes of cases accordingly are for the Commissioner alone. However the Commissioner is otherwise subject to Ministerial decision-making in relation to resources. It would be proper for example for Ministers to impose directions as to staff ceilings for general economic purposes.

(e) Regulation 7 of the Police Regulations 1959 provides in essence that the Commissioner is responsible to the Minister for the general administration and control of the Police and shall cause all members of the Police to discharge their duties to the Government and the public satisfactorily and efficiently. That does not however in my opinion make him subject to directions in matters affecting his law enforcement functions.

(f) There is undoubtedly room for the Minister of Police to require consultation with the Commissioner in respect of operational requirements; and allocate targeted resources for a Police enforcement programme (eg Springbok Tour 1981, Rainbow Warrior enquiry).

Summary

3. The constitutional position of the Minister of Police in relation to the Commissioner is that:

(a) The Minister may not direct the Commissioner in the latter's duty to enforce the criminal law either in particular cases or classes of case.

(b) The Minister may however impose binding requirements in respect of matters of administration not directly affecting the Commissioner's duty to enforce the criminal law (eg imposing staff ceilings, approving spending proposals in non law enforcement functions, etc).

In between those clear cases convention and practice continues to ensure the ultimate autonomy of the Commissioner within the area of criminal law enforcement subject to the consultative processes instanced in 2(f) above; including a power to allocate targeted funds.

J J McGrath
Solicitor-General