

In the High Court of New Zealand
Wellington Registry

CIV-2000-485-854 (CP No 50-00)

Between P E C DOONE
First Plaintiff
And R J JOHNSTONE
Second Plaintiff
And INDEPENDENT NEWS AUCKLAND LIMITED
Defendant

BRIEF OF EVIDENCE OF THE RIGHT HONOURABLE HELEN
ELIZABETH CLARK

Approved this 13th day of April 2005

IZARDWESTON
LAWYERS

Solicitors
Level 13
89 The Terrace
WELLINGTON
PO Box 5348
DX: SP27002, Railway Station
Phone: +64 (4) 473 9447
Fax: +64 (4) 473 4457
Contact Solicitor: Peter McKnight
peter.mcknight@izardweston.co.nz

KC1305-167001
26920445

pk

1. My full name is Helen Elizabeth Clark of Auckland
2. I am the Prime Minister of New Zealand.
3. I understand that this proceeding relates to an article appearing in the 16 January 2000 edition of the *Sunday Star-Times* and editorial appearing in the 23 January 2000 edition of the *Sunday Star-Times*.
4. I have noted that the claim relates to an article and the relevant parts of an editorial in respect of a Police stop of a vehicle occupied by the former Commissioner of Police, Mr Doone and his partner on election night in 1999.
5. I have noted that they allege that the article and the editorial were defamatory; and have brought proceedings against Fairfax New Zealand Limited as the publisher of *The Sunday Star-Times*.
6. I have been advised by Fairfax New Zealand Limited, which now publishes the *Sunday Star-Times*, that it requires me to give evidence in respect of this proceeding in relation to the government actions which relate to the inquiry into the conduct of the First Plaintiff. I have been advised that the Defendant would require that attendance under sub-poena if necessary. On that basis I am providing this brief of evidence. This is in order to inform the Court of evidence I understand may be required to enable this proceeding to be determined.
7. I was advised only a short time ago of the possible need for such evidence. I have not been aware that these proceedings were unresolved and for hearing. The events I have been asked to recall were over five years ago. While I recall the key elements of the government's actions, I have only a general memory of the detail of some matters, including in particular the contacts I had from Mr Alley and Ms Carty.

My first involvement in the matter

8. I first became aware of the election night incident involving the then Commissioner of Police within a day or two of it occurring. The incident occurred on the evening of the 1999 election. When I was first informed of it I was Prime Minister-elect, and I was informed that investigations were being undertaken.
9. I was informed that there would be an internal Police inquiry carried out by the Deputy Commissioner of Police, Rob Robinson. This took place and subsequently there was a Police Complaints Authority inquiry, carried out by Judge Neville Jaine.

H/cep

KC1305-167001

10. Following the completion of Judge Jaine's inquiry, the reports of both inquiries were referred to the relevant Minister who had been appointed by me to deal with the issue. This was the Attorney-General. The reports in due course were sent to other Ministers and to me. *[Refer to copies of the Robinson report and the PCA report]*

Government's response

11. Any matter affecting the office of Commissioner is a serious matter which has to be dealt with at the highest level of government. In this case, having received the reports, the Government followed due process, giving Mr Doone a full opportunity to defend his position.
12. This included correspondence between the then Attorney-General and Mr Doone's counsel, Mr John Upton QC.
13. On 12 January 2000 the Attorney-General wrote to Mr Upton in a letter which included the following statements:
- 13.1 "The Ministers are concerned that the Commissioner's poor judgment may have, accordingly, created a situation in which it is no longer tenable for the Commissioner to remain in office."; and
- 13.2 "Overall the Commissioner's actions are presently viewed as a very serious failure of judgment.
14. I was one of the Ministers who held the position set out in that letter..
15. The letter invited a written response by noon on 17 January 2000.

[Produce 12 January 2000 letter]

16. After a consideration of the information available to the government, namely the information and conclusions recorded in the Robinson Report and the subsequent Police Complaints Authority Report, and the responses through Mr Upton QC, Ministers had to consider what action was required. The information and conclusions in the reports raised an issue of confidence in the Plaintiff's ability to continue in his role as Commissioner.
17. This issue of confidence was not a result of media coverage. The Commissioner of Police holds office "at pleasure" which means that any Commissioner has neither

AG

tenure nor a fixed period of appointment. Any issue which raises a question as to conduct of a Commissioner has to be considered by the Crown under due process. This involves, and on this occasion did involve, the Attorney-General and the Solicitor-General. An issue of this importance is considered under due process, not as a reaction to media reports. A process was established and followed in which Mr Doone was represented by Mr Upton QC. In the course of that process, Ministers reached the view that they had lost confidence in Mr Doone. This loss of confidence was the outcome of our consideration of all information about the incident contained in the Robinson and Police Complaints Authority Reports and Mr Upton QC's responses.

18. Having considered Mr Doone's responses and Mr Upton QC's submissions, a possible resolution of the matter was identified and the Attorney-General wrote to Mr Upton QC setting that out as a proposal. That letter is self-explanatory. *[Produce 24 January 2000 letter]*.
19. That proposal was accepted by Mr Upton QC on the then Commissioner's behalf, in a letter of the same date. *[Produce letter from John Upton QC]*
20. As a consequence, on 25 January 2000 I issued a "Media Statement" entitled "Statement on Commissioner of Police" summarising how matters had been resolved with Mr Doone. *[Produce copy of Press Release]*

The *Sunday Star-Times* articles:

21. I understand from the court proceedings that Mr Doone alleges that it was as a result of the 16 January 2000 article and the 23 January 2000 editorial, both appearing in the *Sunday Star-Times*, that he resigned from the office of Commissioner of Police.
22. As I have stated, the government's position was not determined by media reports. The correspondence from the Attorney-General to Mr Doone's counsel records that he had lost the confidence of Ministers before the 16 January 2000 article was published. His response, through his senior counsel, did not restore that confidence. He accepted a severance proposal after that.
23. I have been informed it is suggested that the editorial on the 23 January 2000 influenced the government's approach and in some way led to the correspondence sent by the Attorney-General on 24 January 2000 to Mr Upton. The Government's response was not a result of or influenced by the article or the editorial. The information I relied on was derived from the reports I have referred to.

WEC

KC1305-167001

24. The Police Complaints Authority Report (which is attached to the Robinson Report) was made public together with my Media Statement. This was because they were the reports that informed the Government's position and were the basis of the action taken.
25. On the evening of 25 January 2000, I appeared on the *Holmes* programme in an interview by Susan Wood. She also interviewed Mr Doone.

My discussions with Oskar Alley and Sue Chetwin

26. I have some recollection that I was contacted by Oskar Alley, who I knew to be a reporter at the *Sunday Star-Times*, on one or more occasions. I do not now recall the dates of the individual calls.
27. Mr Alley sought information from me in relation to the inquiries which had taken place and how the government would respond to them.
28. As Prime Minister, I accept that I have to deal with such inquiries from media, provide information about government actions, and provide information about matters ascertained as part of those actions. Mr Alley wanted information on our process, and also whether the information held by Ministers was consistent with information he had obtained from his own inquiries. I do not now recall the detail of that discussion, but I accept that I would have confirmed to him that information held by Ministers included allegations that the Constable who stopped the car occupied by the Commissioner had a sniffer in his hand. It also included information that Mr Doone was said to have stated to the constable during their discussion that "that won't be necessary", seemingly as a reference to the use of the device.
29. I am informed that Mr Alley states he put those propositions to me and I said words to the effect of "you're not wrong". I accept that this is correct although I do not have a current recollection of this detail. I am certain that I drew attention to the issue that Mr Doone had disputed these details during the inquiries to which I have referred.
30. I am informed that Mr Alley states that on the following day at around 6.00pm on 15 January 2000, he had a further telephone discussion with me. I do not recall the detail of that but accept it is correct, and that we discussed aspects of his understanding of the Robinson Report and the Police Complaints Authority Report.

HSE C

31. I recall that the discussion with Mr Alley focussed on his view that the key issue was whether the Commissioner had erred in talking to the constable, given that the constable recognised who he was, and that this may have resulted in normal procedures not being followed. I recall that when discussing the Constable's evidence, I emphasised the need to make it clear that Mr Doone had described the events differently.
32. I have some recollection of a separate conversation with Sue Chetwin, the then Editor of the *Sunday Star-Times*. I am not now certain of the content of that discussion, except that it was similar to my discussions with Mr Alley, and that Ms Chetwin's purpose in calling me appeared to be to reassure herself that her paper had adequately checked and investigated the matter.
33. The following week, after publication of the 16 January article, Mr Alley contacted me again. I recall that I went through some aspects of the information contained in the Police Complaints Authority Report again.
34. Mr Alley was concerned to ensure that the article which had gone to press the previous week was accurate.
35. I confirmed to him that, based on my then understanding, the factual position he had discussed with me was, as far as I knew, accurate.
36. I understood this to be one part of the research and investigation being undertaken by the newspaper. In the particular circumstances of this matter I confirmed such information as I properly could as to the process the government was following and the issues we were considering. The final form and content of any articles were matters for the judgment of the editor and publisher of the newspaper.

Dated this 13th day of April 2005



Helen Elizabeth Clark