

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 FAIRFAX NEW ZEALAND LIMITED
 Defendant

BRIEF OF EVIDENCE OF OSKAR EDUARD ALLEY

Approved this 15th day of April 2005

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1. My full name is Oskar Eduard Alley.
2. I live in Wellington and am presently employed as a journalist by *The Dominion Post*.
3. I hold a Bachelor of Arts Degree in Political Science from Victoria University and have a Postgraduate Diploma in Journalism from the University of Canterbury.
4. Following completion of my studies, I commenced work for *The Southland Times* in Invercargill, an Independent News Limited ("INL") Publication, in 1998.
5. Subsequently I joined *The Dominion*, in Wellington, where I worked until August 1999.
6. I then joined *The Sunday Star-Times*, Wellington office, where I was employed until May 2000. *The Sunday Star-Times* was then an Independent News Auckland Limited ("INAL") publication.
7. In May 2000 I returned to *The Dominion* (which subsequently became *The Dominion Post*) where I worked as a political reporter based in Parliament.
8. In February 2001 until December 2001 I was employed by Television New Zealand as a journalist. I worked on the *Holmes Show* (as a Producer).
9. I then returned to *The Sunday Star-Times* in December 2001, which position I held until July 2004.
10. On 12 July 2004 I returned to *The Dominion Post*.
11. My work has also been recognised by my peers. In 2003 I was made Senior News Reporter of the Year at the Qantas Media Awards, and also won awards for the Best Social Issue story and the best Politics, Foreign Affairs and Diplomacy story. In 2004 I was one of two finalists in the Senior News Reporter of the Year category.
12. I understand that: (i) this proceeding relates to an article written under my by-line in the 16 January 2000 edition of *The Sunday Star-Times* and the subsequent *Sunday Star-Times* editorial on 23 January 2000; (ii) the article and (so far as is relevant) the editorial relate to a Police stop of a vehicle occupied by the former Commissioner of Police, Peter Eric Charles Doone ("Peter Doone") and his partner Robyn Jean Johnstone ("Robyn Johnstone") on election night in 1999; (iii) they allege that the article and the editorial were defamatory; and (iv) and, accordingly, they have brought this proceeding against Fairfax New Zealand Limited as the publisher of *The Sunday Star-Times*.

13. I have been asked by Fairfax New Zealand Limited, which now publishes *The Sunday Star-Times*, to give evidence in relation to this proceeding.

Overview

14. I was assigned to the story in relation to the Police stop of Peter Doone and Robyn Johnstone on election night 1999, a week or so after the initial *Holmes Show* broadcast. I had no particular view on the matter and no "axe to grind".
15. I investigated the story carefully throughout and prepared various stories, including the 16 January 2000 story.
16. These were matters of public interest. There were serious allegations of impropriety, or at least poor judgment, by the then Commissioner of Police.
17. I made every effort to report the story truthfully and accurately. Fresh allegations were corroborated from credible independent sources.
18. Whilst I accept that it subsequently transpired that the "That won't be necessary" phrase attributed to Peter Doone proved not to be literally accurate, I remain of the view that the substance of this story as a whole was accurate. I have no doubt that the effect of former Commissioner Doone's intervention was to give Constable Main the impression that a breath test and/or discussions with Robyn Johnstone would not be necessary.

The Sequence of Events

The story first breaks

19. As I recall, the first media coverage of the incident involving Peter Doone was on the *Holmes Show*, TVNZ, on Friday 3 December 1999. My understanding is that they had been informed of details relating to events on November 27 1999, which was election night.
20. The *Holmes Show* broadcast a very short piece that was read by the presenter, Paul Holmes, which referred to the incident very briefly and carried a statement from former Commissioner Doone in which he made the comment that he had exchanged pleasantries with the officers involved. I have since obtained a transcript of that broadcast from Newstel. [Produce copy transcript of the *Holmes* broadcast.]

The Sunday Star-Times' first article

21. On 5 December 1999, *The Sunday Star-Times* ran a front-page story, without a by-line, basically repeating the fact that the Holmes Show had reported this matter and also repeating Commissioner Doone's statement that he had exchanged pleasantries with the driver. By that stage it had also become apparent, from a statement released by Police Headquarters, dated 3 December 1999, that Deputy Commissioner Rob Robinson was investigating the incident as a result of inquiries made by TVNZ's Holmes Show programme. [Produce copy 3 December 1999 statement.]
22. I understand that a journalist in the Auckland office of *The Sunday Star-Times* wrote 5 December 1999 story. I believe that it was probably pretty much based upon the Holmes Show item, including former Commissioner Doone's statement, although obviously any such story would have been properly checked out before it went to print.

My first involvement

23. I first became involved in the story the following week when *The Sunday Star-Times* assigned me as the Wellington reporter in relation to the story. One of the reasons I was assigned to the story because I was a former Wellington Police reporter and therefore had contacts within Wellington Police.
24. The Sunday Star-Times management structure required me (like all news reporters) to report to my immediate superior, news editor Shayne Currie. Regardless of the stories I was working on I would have daily contact with Mr Currie, to discuss story ideas and progress on stories hat have already been assigned.
25. In higher-profile stories, and stories that the newspaper has prioritised, such as those on Mr Doone, I would have more frequent contact with Mr Currie.
26. In relation to this story, discussions included how to investigate matters that arose and instructions from Mr Currie as to when and how to contact the relevant parties involved in the story, including Mr Doone and his lawyer.

My previous dealings with Mr Doone

27. I have attended a small number of press conferences Mr Doone had held at Police Headquarters, with other journalists present. In my time as a journalist I have only ever had one direct one-on-one interview by telephone with Mr Doone, which was conducted in late December 1998.

28. The resulting article, headlined "Police take stock of a hectic year", was published in *The Dominion* on January 8, 1999. The article "Mr Doone extensively praising his officers' actions throughout 1998" was essentially a complimentary article.
29. My recollection of the interview is that it was good-natured and cordial at all times. I thanked Mr Doone for taking the time to speak to me as I was aware he was very busy and had other pressing engagements that day.
30. In addition, as a police reporter at both *The Dominion* and *The Sunday Star-Times*, I had extensively covered the INCIS computer budget blow-out. Between September 1998 and October 1999 I had written 21 bi-line articles on this subject, including two articles for *The Sunday Star-Times* that were published on 24 October 1999 and 31 October 1999. Of those articles only one mentioned Mr Doone.
31. While I was employed as a Police reporter at *The Dominion* and *The Sunday Star-Times* I had little direct contact with Mr Doone. Frequent requests for information from Mr Doone were almost always by way of a statement released by a Police Headquarters' communications team.

My 12 December 1999 story

32. I filed a short story, which appeared in the 12 December 1999 edition of *The Sunday Star-Times*, at the bottom of page 3, without a by-line. The story said that the Police Association had been involved because the matter had become difficult. The story quoted the Police Association President, Greg O'Connor, as saying that the officers' version of events differed from that of Commissioner Doone's and that the Police Association had hired lawyers to represent the two constables involved. [Produce 12 December front-page story]

Initial information from a lawyer

33. The following week, after the 12 December article, I spoke to a Senior Wellington lawyer who had some direct involvement in the matter. I do not wish to disclose the identity of my source, and accordingly do not do so in this written brief of evidence.
34. The Senior Wellington lawyer spoke to me "strictly off the record" saying that "Doone should be facing charges over this", urging me to keep investigating because there was a very good story in this, saying that in the sources' view Peter Doone had acted highly inappropriately, in circumstances in which if it had been an ordinary member of the public they felt that the driver would definitely have been breath tested.

35. Because this information was provided to me "strictly off the record", I obviously could not report the comments, much less attribute them. But the comments suggested that it was appropriate to investigate further.
36. The next week was the build up to Christmas 1999. I continued my inquiries, and started focusing harder on this story.

Information from Police sources

37. That week, on Tuesday, 14 December 1999, the Police Association hosted a Christmas party for its members and also for the media.
38. I attended that function and established detail that would form the basis of *The Sunday Star-Times* front-page story with my by-line on 19 December. This story featured a photograph of Peter Doone and his partner Robyn Johnstone which was taken outside their home in Tinakori Road. [Produce 19 December front-page story]
39. Several people employed by Police Headquarters disclosed a range of details at that function; once again I do not propose to disclose sources in this my brief of evidence. There were indications that there were concerns about former Commissioner Doone's behaviour on election night; Robyn Johnstone, his partner, was the driver of the car; the incident happened on election night; the car was stopped because the headlights were not on; former Commissioner Doone and Ms Johnstone had been at Corporate Yachting function at the Overseas Terminal; had stopped off at a restaurant on the way home; and then been stopped.
40. During a conversation at that function with, say, five serving Police Officers, it was made clear to me that their view was that the driver of the vehicle should have been tested. The officers were very clear that, as the driver of a vehicle operating without lights on a Saturday night, Ms Johnstone should have been breath-tested; apparently that was standard Police practice.
41. The same week as the Police Association Christmas drinks, Police National Headquarters also held Christmas drinks where they invited the media. I attended. Peter Doone informed the crowd that it was the silly season, that people needed to be reminded that they should not drink and drive, especially Senior Police Members, and that if they had been drinking they should always catch a taxi home.

42. I subsequently discovered, as the paper trail of documents emerged (particularly in the Robinson Report – see following paragraphs), that this was the day after former Commissioner Doone had been told that he would have to respond to the Robinson Report (which I mention below) into his behaviour on election night. Robyn Johnstone was also with him at the Police National Headquarters Christmas drinks.

My approach to Ms Johnstone

43. During this week I also went to see Robyn Johnstone personally, from my recollection, on Friday 17 December 1999. At that stage she had left the Land Transport Safety Association. She was working in the Communications Unit at Victoria University. I went to see her at her office at the University.
44. I went to see her face to face in an attempt to interview her about the election night incident. She told me that she would not do an interview but that they were hoping to have this matter wrapped up quickly. That was my first meeting with Robyn Johnstone face to face (I had not been introduced to her at the Police Headquarters Christmas party).

My inquiries of the Police

45. On 15 December 1999, I faxed a handwritten request to Police Headquarters asking for full copies of all documents relating to the Police inquiry under the Official Information Act. [Produce copy of 15 December 1999 request]
46. I followed up that request on 17 December 1999 with faxed handwritten letter to Police Headquarters asking them to alert me (or *The Sunday Star-Times*) that day if the details that we intended to publish that weekend differed from the Police inquiry. This letter set out the information that I had gathered from the Police Association function. [Produce copy of 17 December 1999 letter]
47. I received a faxed response from Kaye Calder, Media Relations Officer for the Office of the Commissioner of Police, that same day. It confirmed that Deputy Commissioner Rob Robinson could not respond to questions as his report on the incident was now with Judge Neville Jaine, of the Police Complaints Authority. [Produce 17 December 1999 reply].

My 19 December 1999 story

48. The first story that appeared in *The Sunday Star-Times* on the subject with my by-line was a front-page lead story on Sunday 19 December 1999. That story included the photograph of Peter Doone and Robyn Johnstone outside their home.
49. The story outlined the case as we knew it at that stage. The key facts were that there was an inquiry underway, that Robyn Johnstone was the driver, that the vehicle was stopped without its lights on, and that Peter Doone and Robyn Johnstone had been observed at the Overseas Terminal at the Yachting function. [Produce 19 December 1999 *Sunday Star-Times* story]

The 26 December 1999 stories

50. The next story *The Sunday Star-Times* published from me was 26 December 1999. The story ran on page 2, under the headline "Doone asked to respond to conduct inquiry". [Produce 26 December 1999 story]
51. This was just a short story. It said that Peter Doone had been asked to prepare a response to the Police Complaints Authority and quoted comments from an interview I did with Judge Neville Jaine, of the Police Complaints Authority, saying that the inquiry had been completed and that Doone had been asked to respond to the findings. The story also quoted a press statement that Peter Doone had issued during the week saying that it was inappropriate for him to be judged until all the facts of the matter had come out.
52. The 26 December edition of *The Sunday Star-Times* also included a story by me headlined "Doone in disastrous INCIS ..." which appeared in Section A, on page 4. The story was unrelated to the election night incident – it related to a Parliamentary Select Committee inquiry into the INCIS Police Computer Project budget blow-out; this was one of the stories I referred to earlier in my brief. There had been a Select Committee Report into that matter but the Committee had withheld a lot of the evidence. This story was run after the non-publication order was lifted, and quoted many of the documents in evidence presented to the Select Committee. The timing was entirely coincidental and this was a separate matter from the driving incident on election night, but the story did document Peter Doone's involvement in the INCIS case. I refer to it only for the sake of completeness. [Produce "Doone in disastrous INCIS ..." story]

My 9 January 2000 story

53. The next story *The Sunday Star-Times* ran was on 9 January 2000. This was again a front-page lead story under my by-line and the headline "Labour considers sacking Doone". The story began "The Government is taking legal advice on how beleaguered Police Commissioner Peter Doone can be sacked". [Produce 9 January 2000 story]
54. This story was written under my by-line because I was the reporter who had been covering the story. However, the bulk of the information contained in this story came from Ruth Laugesen, who was then *The Sunday Star-Times'* political editor.
55. This story was based on a series of interviews Ms Laugesen had done with members of Helen Clark's staff. As I recall, a lot of the quotes used in this story were taken down by Ms Laugesen and electronically messaged to me. They were then incorporated into the story, without actually quoting anyone in particular. The story concludes by saying that Peter Doone was on holiday and "a Police National Headquarters spokeswoman is saying the Police Department will not comment because it is a personal and private matter for the Commissioner".

My 16 January 2000 story

56. The next story which *The Sunday Star-Times* ran was the 16 January 2000 story which appeared on the front page under the headline "Doone case cop was ready to breath test" and continued on the second page under the heading "Doone case cop was set to breath test". I prepared that story in the week leading up to 16 January 2000 [Produce 16 January 2000 story.]
57. I understand that this proceeding focuses on the use of the words "that won't be necessary" and the reference to breath testing in this story.

Corroboration of the new information in the 16 January 2000 story

- The initial anonymous phone call

58. The first information I received about Peter Doone allegedly using the words "that won't be necessary" came from an anonymous phone call to me at *The Sunday Star-Times* in Wellington. An anonymous individual telephoned me on about Tuesday 10 or Wednesday 11 January 2000 and said something along the following lines: "You're Oskar Alley, you're doing the stories on Peter Doone. I know the Constable involved

Are you aware that Peter Doone said to that Constable "That won't be necessary" on the night in question?"

59. I took this information on board. Of course an anonymous phone call on its own is not a reliable enough source.

- A Senior Government Advisor source

60. So, that week, I contacted a Senior Government Advisor in the Police Sector with whom I had had dealings previously. Once again, I am not prepared to disclose the identity of that source in this my brief of evidence; or for that matter at trial.

61. The Senior Government Advisor in the Police Sector told me that they had spoken to several Senior Ranked Officers in the Wellington Police. My understanding is that it was the Wellington Police who were investigating what happened in the driving incident on election night on behalf of the then Deputy Police Commissioner, Rob Robinson.

62. The Senior Government Advisor in the Police Sector confirmed that he was told that our information and the words "that won't be necessary" were correct and were being discussed by Senior Ranked Officers he contacted on my behalf. He also told me, which was something I did not know at the time, that the Constable who spoke to Peter Doone on the night in question was holding a sniffer device, which I understood was the device Police use for doing initial breath tests on drivers they suspect have been drinking.

- The Senior Police source

63. I then approached a current Senior Police source in Wellington. Once again, I do not propose to disclose his identity in this my brief of evidence; or at trial.

64. I asked the current Senior Police source to confirm that it was alleged that Peter Doone had used the words "that won't be necessary" and the information in relation to the sniffer device.

65. The source told me that I was correct that the Constable was holding a sniffer device when he approached Peter Doone's car in an attempt to speak to Robyn Johnstone, the driver. However, the source said that he had not been involved in the inquiry and could not comment on the alleged use of the words "that won't be necessary" by Peter Doone.

66. That corroboration of the fresh information gave me some confidence in the information that I had been given.

- **Wellington Central Police sources**

67. While I was making these inquiries I was also aware of a groundswell of dissatisfaction amongst Wellington Central Police Station employees about Mr Doone's public comments/explanation. Wellington Central was conducting the inquiry on behalf of the Assistant Commissioner, Rob Robinson. In particular, from the outset Mr Doone had claimed that he had "exchanged pleasantries" with Constable Main and there was an awareness that Constable Main's version of events differed significantly from Mr Doone's. This message emerged from a range of Wellington Central Police Station sources, albeit that they were not prepared to go "on the record".

- **Attempts to contact the constable through his lawyer**

68. At that time, I did not have the names of the constables involved in the incident so I could not contact them. But I knew that Mike Antunovic, a Wellington lawyer, acted for one of them.

69. I located a mobile telephone number for Mike Antunovic and on Friday 15 January 2000 I called his mobile to try to get in touch with him so that, either through him or directly, I could check the accuracy of my story. My call was answered by Mr Antunovic's (female) partner who explained that they were on holiday in Taupo and that Mr Antunovic did not have his cell phone with him.

70. I left my contact details, both office and personal numbers, and asked that he call me as soon as possible. Mr Antunovic's partner explained that he was not due back until late that night and agreed to give Mr Antunovic my message. He did not return my call.

- **First contact with the Prime Minister**

71. I then approached the Prime Minister.

72. By the time I approached the Prime Minister, both the Robinson and PCA reports into the matter would have been completed, signed off and handed to appropriate Government Members. The Prime Minister made it clear that she had seen both reports (as noted later in the brief).

73. My intention was to check that the Constable had been holding a sniffer device in his hand and whether the "that won't be necessary" words had been used in the context of any attempt to breath test the driver. I wanted to ascertain that this was the Constable's account and that it had been included in the report.
74. The Prime Minister confirmed that I was correct that:
- 74.1 The Constable had a sniffer device in his hand as he approached the car to test for alcohol; and
- 74.2 Included in the comments Peter Doone made to the Constable, with regards to the breath test, Peter Doone said "that won't be necessary".
75. The Prime Minister specifically said, "... you're not wrong".
76. The Prime Minister also provided more information as to the stage the Government's handling of the matter had reached, and confirmed receipt of the Robinson Report.
77. Suffice to say, I was by this stage very confident as to the accuracy of both the allegations that there was a sniffer device held and the allegation that the words "that won't be necessary" were used and were being commented upon. Both had been corroborated by reliable, independent sources.
- Attempts to contact Peter Doone
78. The following day, on Saturday 15 January 2000, I tried to contact Peter Doone at the home that he shared with Robyn Johnstone in Tinakori Road in Wellington. I rang him at 11:45am. The answer phone clicked on and I left a message that I was writing a story which included part of the Constable's evidence and that I had information to which I felt he needed to be given the chance to respond.
79. In the answer phone message I did not ask him to respond to the suggestion that he told the Constable "[t]hat won't be necessary" because I wanted Mr Doone to contact me directly so that I could hear his immediate response to that allegation first hand. This is a standard interviewing technique. I did not want to hear a scripted answer and so I simply invited Mr Doone to return my call.

- **Contact with John Upton QC**

80. At 3:00pm that same day Peter Doone's lawyer, John Upton QC, telephoned me at my office at *The Sunday Star-Times* to say that Peter Doone had just cleared my message and that we would be provided with a statement later that day.
81. At 6:00pm John Upton telephoned to say that he was reading for me a prepared statement from Peter Doone, the full text of which was published in the 16 January 2000 story the following day.
82. When Mr Upton finished reading the statement I tried to put more information to him with the express purpose of repeating in full the information we intended to publish. I specifically recall saying that there were more matters that I needed to put to him.
83. Mr Upton interrupted me and said, in an abrupt and frosty tone, that there would be no further comment saying "end of statement, end of questions". He then hung up on me.
84. Mr Upton's position was absolutely clear. There would be no further comment on any further allegations. That was Mr Upton's choice, on behalf of his client, not mine.

- **Further contact with the Prime Minister**

85. In any event, very shortly after my conversation with Mr Upton, on Saturday 15 January 2000 (immediately before we went to publish the story), I had a further telephone discussion with the Prime Minister in which I again obtained an assurance that the information we had discussed earlier was accurate. The Prime Minister referred to aspects of both the Robinson and PCA reports.

- **Attempts to clarify via the Police National Headquarters**

86. In addition, that evening I endeavoured to clarify the story through the Police National Headquarters.

- **Further attempts to contact John Upton QC**

87. I also tried to contact Mr Upton again, following discussions with Shayne Currie, to whom I reported at the time. In the circumstances, I gave Mr Upton 15 or 20 minutes or so to calm down before calling him again on the "05" number. I rang several times and there was no answer. Since there was no answer machine, I did not leave a message.

- Mr Upton's response in context

88. I now understand that, after hearing the answer phone message I left earlier in the day, Peter Doone had assumed that I had the full written text of the Constable's evidence as it appeared in the Police Report. In fact I did not have that transcript at the time. I did not intend to give him that impression in my telephone message. Nor do I believe that I did. I believe he was simply mistaken.

89. With the benefit of hindsight, I can see that Peter Doone's statement that was issued to us by his lawyer, Mr Upton, may have been intended to show that his account of events differed from that of the Constable's full written evidence (as opposed to the information which we intended to and did report). But as I have already noted, Mr Upton was not prepared to discuss the matter any further other than to provide the scripted statement on behalf of his client. I had attempted to run that information past Mr Upton to test it with him too (on behalf of his client) but he simply refused to continue the conversation by hanging up on me.

90. In any event, as it happens, it appears that Peter Doone's account of events did differ from the statements relating to the sniffer device and the "that won't be necessary" comments which appeared in the 16 January 2000 article. So Peter Doone's position was accurately reported in the article.

91. Mr Doone's press statement, which was faithfully reported in the 16 January 2003 article, accurately recorded all that Peter Doone was prepared to say in relation to the matter.

- Other checks by Sue Cherwin

92. Finally, my recollection is that, while I was trying to again make contact with Mr Upton QC, Sue Cherwin (*The Sunday Star-Times*' editor) also had a conversation with the Prime Minister to double check the information, just to be certain that we were correct before the story was published. Ms Cherwin will separately give evidence covering that conversation.

- Conclusion re corroboration

93. I do not see what more I could have done. Various credible independent sources corroborated the key facts that appeared in the story. I had no reason to doubt the accuracy of the story or the information provided by my sources.

94. Mr Upton had interceded between Peter Doone and me, so we reported precisely the statement Mr Upton provided to me. It was made very clear to me that Mr Upton and his client simply had nothing further to say.

The response to the 16 January 2000 article

95. On 16 January 2000, following publication of the article of that date, I became aware through other journalists that Peter Doone had taken exception to our report. I also became aware that Peter Doone had issued a statement to the New Zealand Press Association informing the agency that *The Sunday Star-Times'* story and information contained it was allegedly incorrect, defamatory, and had not been raised before.
96. That statement from Peter Doone was faxed to *The Sunday Star-Times* and was also there when I returned to work on the Tuesday morning (I do not work Mondays). It was then forwarded to Sue Chetwin in Auckland.

The 23 January 2000 story

97. The next story *The Sunday Star-Times* published under my by-line was the following weekend, on 23 January 2000, under the headline "Last chance to resign, Cabinet ready to ask Doone to fall on his sword" [Produce 23 January 2000 front page story]
98. This story begins "The Government is set to ask beleaguered Police Commissioner, Peter Doone[,] to quit this week". The story quotes Government sources as saying that Peter Doone would be asked to fall on his sword.

Further discussions with the Prime Minister

99. The information in my 23 January article came solely from an interview that I had with the Prime Minister
100. I understand that Peter Doone's 16 January 2000 statement prompted a further conversation between Sue Chetwin and the Prime Minister to re-check the accuracy of the facts reported in my 16 January 2000 article. Again, Sue Chetwin will refer to that conversation.
101. After that conversation, Sue Chetwin told me that Ms Clark had dismissed Mr Doone's comments and had indicated that the 16 January article was accurate, that the newspaper had nothing to worry about, and that she did not consider that Mr Doone had any grounds for legal action. Sue Chetwin asked me to contact the Prime Minister

again as the Prime Minister had indicated that she was prepared to disclose extracts of the relevant reports.

102. I then made contact with the Prime Minister. This was on either Thursday 20 January 2000 or Friday 21 January 2000. My conversation with the Prime Minister was the day after Sue Chetwin's conversation with the Prime Minister.

103. During my conversation with the Prime Minister she:

103.1 Said that the Constable who stayed in the Police car confirmed that the Constable who got out of the car had the sniffer. She quoted a passage from the Robinson Report on that subject;

103.2 Still didn't think *The Sunday Star-Times* had anything to worry about in relation to the story last week; and

103.3 Indicated that – as she said she had said to Sue Chetwin the previous day – she would hang tough on this one if she were *The Sunday Star-Times*.

104. I took comfort from the Prime Minister's comments. She had the relevant documents and reports, parts of which she read to me over the telephone. With the benefit of that information in front of her, she confirmed that there was nothing to worry about in the story the previous week. In effect, she confirmed that, despite Peter Doone's statement, the 16 January 2000 article had been accurate.

105. She also read to me parts of the Robinson Police Inquiry, which were quoted in the story. The story also included a brief sidebar headed "The Chief's Career" which was a biographical account of Peter Doone's career.

106. In the story parts of my interview with the Prime Minister are quoted verbatim, including parts of the report of the Robinson Report. The Prime Minister also made comments that the media would have a field day because the evidence was contradictory.

107. I specifically put it to the Prime Minister that they would ask Peter Doone to fall on his sword. It was confirmed to me he might, that that was in the plan, and that that was what the Government were going to ask him to do.

108. I also sought confirmation of when the Government would make the announcement that Peter Doone would be asked to resign.

109. The Prime Minister also confirmed that Robyn Johnstone had been drinking and that Robyn Johnstone had admitted to investigators to drinking more than one glass of wine. I was told that she admitted to drinking two to three glasses.

Further attempts to contact the Constables

110. During the week that preceded my 23 January 2000 article, I was able to confirm the identities of the two officers involved in the incident as Constable Brett Main and Constable Mark Haldane.
111. Until that point, several Police sources had refused to tell me, or to confirm, their names because they did not want the officers to be identified and their names published as they were already under considerable stress caused by the Robinson investigation.
112. I made considerable and extensive efforts throughout that week to contact the two officers. I recall neither Mr Main nor Mr Haldane were listed in the electoral rolls, which would furnish me with their home addresses. In my experience police officers are not commonly listed in such rolls for fear of their homes being identified.
113. Through a call to the Wellington Central Police Station receptionist, I was able to identify that both officers were part of the Section 5 group, that their supervisor was Senior Sergeant Tony Collins, and that for that week the section was working on a late shift which began at about 10.30 pm each night.
114. I made telephone contact with Mr Collins at his home address and sought to discuss the incident with him. He was cordial but declined to comment on any aspect of the incident, explaining that it would be inappropriate for him to do so. He also asked that I not make any effort to contact Mr Main and Mr Haldane directly.
115. With no addresses and no telephone numbers for Mr Main or Mr Haldane, I decided to visit their workplace at the Wellington Central Police Station.
116. I believe I visited the station at night on either Wednesday, 19 January, or Thursday, 20 January 2000. At about 11.00 pm I entered the station and rang the bell in the public foyer area. A uniformed officer entered the room and I asked to speak to Mr Haldane or Mr Main.

117. A short time later Mr Haldane walked out to greet me. I introduced myself and explained that I wished to talk to him regarding the election night matter. Mr Haldane said he was sorry but could not talk to me. He said he knew I was the reporter who had been covering the matter for *The Sunday Star-Times*, but he had been advised not to make any comment to the media whatsoever. During our short cordial conversation, I attempted to explain why it was important that I speak to him and what I wished to discuss. However, he was insistent that he could not talk.
118. I asked Mr Haldane if Mr Main was in the building and he advised that he was not, but would not say where he was. I explained that I also wished to speak to Mr Main. Mr Haldane said Mr Main had been advised not to talk to the media. Mr Haldane then wished me farewell and left the room.
119. I note that Mr Main and Mr Haldane were subsequently publicly identified for the first time (so far as I am aware) as the officers who stopped Mr Doone in an article in the *Weekend Herald* newspaper on Saturday, 22 January 2000.

Further comments from John Upton QC

120. In addition, my 23 January 2000 story included comments from Peter Doone's lawyer, Mr John Upton QC.
121. On 22 January 2000, I telephoned Peter Doone at his home again. Again, I left an answer phone message. I suspect Mr Doone would have contacted Mr Upton who would have contacted me. I can specifically remember that Mr Upton had left an "06" telephone number to contact him on. He was out of Wellington that day at a bach somewhere up North, but he had a fax machine.
122. As I recall, I telephoned Mr Upton on the "06" number and outlined the questions I would like Peter Doone to answer. Question 1: Why does the Commissioner deny that the Constable had a sniffer. Question 2: Did Ms Johnstone have 2 to 3 glasses of wine that day (which was the information recently conveyed to me through the interview with the Prime Minister).
123. Mr Upton faxed a statement/the answers to the questions in a faxed time at 5:56pm on 22 January 2000. I recall that they were faxed from an "06" telephone number. That was on Saturday 22 January 2000. [Produce a copy of the 22 January 2000 facsimile from Mr Upton]

124. Mr Upton's responses were included in full in the story published on 23 January 2000; the story recorded Mr Upton's answers to the questions I had wanted Peter Doone to answer.
125. I was not involved in the preparation of the 23 January 2000 editorial. This was written by Antony Hubbard, the leader writer in our Wellington office. I understand that Ms Chetwin and Mr Hubbard will comment on that.

Mr Doone's future

126. On 25 January 2000 Mr Doone suggested that he had resigned of his own volition and that there was no deal with government. He was quoted as saying as much. In a media statement the Prime Minister said the Cabinet had agreed that Mr Doone's early retirement was the best thing to do to avoid creating any perception that there were two standards for the administration of the law in New Zealand.
127. The following day the Government released more information, in a Press Statement from the Prime Minister's Office, on the arrangement struck with Mr Doone to secure his resignation, including fuller information on his salary and budget entitlements for his six-month work on a Maori crime strategy project. That press statement made it clear that, in fact, a "deal" had been done between Mr Doone and the Government [Produce copy of the press statement]
128. The essence of the deal was that Mr Doone had agreed to resign, knowing that if he did not choose to do so he would have been fired. In political, and other, terminology these acts are commonly referred to as "jumping before being pushed". The final deal that was struck, enacted with Mr Doone's resignation, was entirely consistent with the situation as reported by *The Sunday Star-Times* two days earlier, on January 23 2000.
129. In addition, together with the press statement, the government released the PCA report (to which was annexed a copy of the Robinson report and various other documents) to the public – except for some paragraphs of the documents that were excluded under the Official Information Act. [Produce copy of the PCA report and attachments.]

Developments after the 23 January 2000 story

130. Subsequently, on 26 January 2000, I wrote to Mr Doone and Ms Johnstone requesting an interview. In that letter, I noted my repeated attempts to contact them, noted that we wanted to them to tell their story to *The Sunday Star-Times* readers, and noted that there

was a large section of this weeks edition earmarked for an interview with them both.
[Produce copy 26 January 2000 letter]

131. The letter acknowledges that "You have not been in a position to comment until now." This reflected two things. First, Mr Doone had declined to comment, except through Mr Upton. Secondly, now that the reports of the inquiry were public knowledge, and decisions had been taken at the highest level about his future, I felt that Mr Doone might be in a better position to speak freely.
132. The form of the letter that was sent to Mr Doone and Ms Johnstone contained the following words only "We also feel that you must have the opportunity to tell your story to our readers, who have thus far only been presented with parts of the inquiry." The file copy I held, and which I will produce in evidence to the Court, also included the following words continuing after "... the inquiry" "... which included some incorrect information". Those latter five words were deleted, following discussions with my immediate supervisor, Shayne Currie.
133. As I recall, it was clear to us by that time that Mr Doone's account of events continued to diverge from that of the Constable, and so I, and *The Sunday Star-Times*, wished to report Mr Doone's account of events more fully. Whilst the initial draft included the words "incorrect information", on reflection that was not accurate or appropriate, as it was not yet clear whose account was accurate. What was clear, as we had reported all along, was that there was a difference between the two accounts. Hence it was appropriate to give Mr Doone a further opportunity to present his side of the story.
134. On 28 January 2000 I received a response from Peter Doone. The gist of that response was that I will have received all of the material released by the Government under the Official Information Act and that this material, which included his apparently comprehensive detailed submissions, should provide ample accurate information upon which to tell his story to readers. [Produce copy of Peter Doone's 28 January 2000 facsimile]
135. The letter further urged a correction and recorded that unless there was such a correction, he had no intention of giving interviews to me or anyone else from *The Sunday Star-Times*.

136. The letter recorded that Ms Johnstone had asked him to inform me that she felt the same way.

The 30 January 2000 story

137. The last story *The Sunday Star-Times* ran on the Peter Doone investigation was the following week, on 30 January 2000, in Section A, on page 6, headlined "Deputy pulled no punches". [Produce copy of the 30 January 2000 story.]
138. This is an article I wrote on the strength of an interview with Rob Robinson, the then Deputy Police Commissioner. In fact, at that stage, he was the Acting Police Commissioner because by then Peter Doone was no longer the Police Commissioner.
139. During the interview Rob Robinson talked about how he found it personally difficult to investigate his boss. The story repeated information from a variety of sources and is self-explanatory.

The release of official documents

140. The release of documentation to the media was a slow process.
141. I did not receive a prompt response to my 15 December 1999 Official Information Act request to Police for information. I felt I was being fobbed off.
142. Eventually, and as I have already noted, some information did emerge. First, on [] and following the announcement of the "deal" which was done with Mr Doone, the PCA report into the matter, including a copy of the Robinson report and various documents, was made public. The reports were made available with the Prime Minister's Media Statement.
143. Secondly, on 10 February 2000, the Office of the Prime Minister released further documentation to the Opposition National Party, under cover of a letter of 10 February 2000 addressed to Ms Sarah Boyle, of the Office of the Leader of the Opposition. Attached to this was a substantial volume of documents.
144. The practice is that when such documents are made public pursuant to an Official Information Act request by one party, these will then be made available to other parties on request. I obtained a copy of the information released to the National Party, although I cannot recall specifically when. [Produce a copy of the Prime Minister's 10 February 2000 Official Information Act request release and attached documents.]

145. By 22 February 2000, I was becoming increasingly concerned and frustrated that aspects of the Police inquiry were being withheld from the public arena. In particular, Police Headquarters were withholding all aspects of the documentation underlying the "Robinson inquiry" on the basis that they formed part of the Police Complaints Authority inquiry and were therefore exempt from Official Information Act requests. Consequently, on 22 January 2000, I made a formal written complaint to Sir Brian Elwood, the Chief Ombudsman. [Produce 22 January 2000 letter]
146. The following day, on 23 February 2000 I received a formal written response from the Police Complaints Authority in which Judge N C Jaine confirmed that at the conclusion of his review he recommended the release of his own report and that of the Deputy Commissioner Robinson, which material and other documents were eventually released from the Office of the Prime Minister, but that he could not agree to the release of anything further. [Produce 23 February 2000 letter from the Police Complaints Authority]
147. On 25 February 2000 I received a written response from the Office of the Ombudsman indicating that the Office of the Ombudsman had decided to undertake a formal investigation into my complaint. [Produce 25 February 2000 letter]
148. There was no formal response to this until 12 April 2000. I then received a response from the New Zealand Police indicating that a decision had been made, following discussions with the Office of the Ombudsman, to release the contents of the criminal investigation file to me, subject to certain exclusions. [Produce 12 April 2000 letter from the New Zealand Police.]
149. I have not been able to locate a complete separate copy of the documents that were attached to that letter. To a large extent I imagine that they duplicated documents obtained earlier from the PCA and Robinson reports and/or from the release to the National Party. In any event, by this time, the story had largely run its course.

The publication of a retraction and apology

150. By this time I believe that we (i.e. *The Sunday Star-Times* and I) had most, if not all, of the relevant documentation that was publicly available and that would become publicly available.
151. It was apparent that there was no record of the "that won't be necessary ..." comment. This appeared to be the case despite the fact that that particular comment had been

independently verified by more than one senior source (as I have noted earlier in this brief of evidence).

152. I believe that this together with some further investigations, culminated in a prominent correction and apology which was published on the front page of *The Sunday Star-Times* in relation to the "that won't be necessary ..." comment. I believe that this aspect will be covered in other briefs of evidence.

The cause of Mr Doone's resignation

153. I understand that the plaintiffs allege that my 16 January 2000 story and/or the 23 January 2003 editorial in some way caused or contributed to Mr Doone's resignation. I do not accept this at all.

154. As I have noted above, the initial media coverage (started by the *Holmes Show* and followed up by a range of other publications and media organisations including *The Sunday Star-Times*) swiftly led to the announcement that there would be a Police inquiry. This was apparent, for example, from the initial statement released by Kaye Calder of Police Headquarters dated 3 December 1999. It said that:

"Deputy Commissioner Rob Robinson has started investigating, with Wellington Police District, to establish the facts surrounding the stopping of a vehicle in which the Commissioner was a passenger in central Wellington last Saturday night.

The investigation stems from inquiries made by Television New Zealand's Holmes programme."

155. Similarly, the response to my 17 December 1999 facsimile request to Police Headquarters seeking to clarify certain issues in relation to the incident was Kaye Calder's fax indicating that Deputy Commissioner Rob Robinson was unable to comment since his report had been referred to Judge Neville Jaine, of the Police Complaints Authority, for his review and consideration.
156. Those inquiries were in progress long before my 16 January 2000 article and the 23 January 2000 editorial that are the subject of this proceeding. In fact both inquiries and the written reports had of their findings were completed in 1999: the Robinson Report by 14 December 1999 and the PCA Report by 29 December 1999.

157. These reports on the circumstances of the matter were clearly pivotal in the Government's decision as to its handling of the situation. This is reflected in the timing of the release of the reports to coincide with the Prime Minister's office's press statement. I can only assume that the government (apparently at the highest levels) relied upon those reports in deciding their position in relation to Mr Doone's future.
158. Furthermore, Mr Doone agreed to the arrangement. In fact, as I have noted already, until the government made the details of the arrangement clear in the Prime Minister's office's press, Mr Doone was suggesting that he had taken the decision to resign solely of his own volition. The press release makes it clear that Mr Doone had taken the decision to resign himself.
159. And correspondence which emerged subsequently following Official Information requests confirms that Mr Doone agreed to the arrangement.
- 159.1 The proposal was put to him in a letter from Attorney-General Margaret Wilson to John Upton QC in a letter dated 24 January 2000. [Produce copy of that letter].
- 159.2 The proposal was accepted in a letter from John Upton QC to Ms Wilson dated 25 January 2000. [Produce copy of that letter].
160. I do not accept, as I understand the plaintiffs to contend, that *The Sunday Star-Times'* 16 January 2000 article (penned by me), or the subsequent 23 January 2000 editorial, caused Mr Doone to lose his job. The writing was on the wall for Mr Doone in both the Robinson and the PCA reports.
161. Mr Doone's departure from the role of Commissioner of Police was, in my view, an inevitable consequence of his actions on election night, coupled with the findings of the subsequent Robinson and PCA reports.

This was a matter of significant public interest

162. The *Sunday Star-Times* devoted considerable time to investigating the November 27, 1999 traffic stop incident because the matter was of significant public interest given Mr Doone's position as Commissioner of Police, the question surrounding the vehicle stop, and the fact that Ms Johnstone was not spoken to by Constable Main.

163. Police officers are required by their oath of office to carry out their duties “without fear or favour”. Mr Doone’s decision to alight from the vehicle and speak to Constable Main raised serious issues relating to public confidence in the integrity of the police force, most notably that a high-ranking officer should not and would not receive, nor seek, any special treatment for himself or anyone else because of his position of authority.
164. The fact that Ms Johnstone was not spoken to by Constable Main, and not breath-tested, resulted in public doubt as to what really happened that evening and as to the reasons behind what did and did not take place. In my experience, the public expects the law to be upheld impartially at all times and that the press will cover situations where there are suggestions that this has not been the case.
165. *The Sunday Star-Times* (and other media) investigated both the incident, and the ongoing inquiries that resulted, to inform the general public about a matter directly relevant to the integrity of the police force, and that of New Zealand’s top ranked police officer.
166. *The Sunday Star-Times* reported the facts as and when they became available, verifying its stories from credible and appropriate sources.
167. The importance of the issue was confirmed in the Deputy Commissioner Rob Robinson’s report following his inquiry into the matter. Mr Robinson indicated to the Police Complaints Authority that the matter was “of such significant public interest as to put at risk the reputation of the New Zealand police force”.
168. It was that significant public interest that motivated me, and *The Sunday Star-Times*, to cover the story as accurately as possible based on the information that was available, including information obtained and corroborated through extensive inquiries.
169. To the extent that any of the detail proved not to be precisely accurate (e.g. the “that won’t be necessary” comment), any inaccuracy reflected the best available information at the time following investigations corroborating the story.
170. Significantly, Mr Doone himself, through his senior legal counsel, Mr John Upton QC, had declined to comment further on the precise allegations. So, to that extent, some points of detail could not be corroborated through Mr Doone. However, the story did record Mr Upton’s comment that Mr Doone’s account of events differed and the thrust of the story as a whole remained (as it still does) accurate.

The nub of the story

171. This was a story about the intervention of the then Commissioner of Police, Peter Doone, when he was stopped by officers in the execution of their duties.
172. Both the Robinson report and the PCA report confirm the main thrust of what was reported in the 16 January 2000 article and, to some extent, the 23 January 2000 editorial – that the Commissioner’s intervention precluded proper processes from being followed. Mr Robinson’s report states: “Constable Main was undoubtedly diverted from his stated intention of speaking with the driver and the reason for this was Commissioner Doone’s intervention”.
173. I accept that the reference to Mr Doone having said “That won’t be necessary” has not proven to be accurate. Instead it appears that, whatever words were actually spoken, Mr Doone’s mere physical presence in the context of the exchange with Constable Main was enough to convey the message to Constable Main that he should take matters no further, not speak with the driver, and not pursue breath-testing procedures. Constable Main’s evidence to the Robinson Report stated that he felt “intimidated” by Mr Doone’s presence and actions that night. “... I remember feeling that it wasn’t fair that he could get out of the car and talk to me like that.”
174. Whether that intervention was achieved by words such as “that won’t be necessary”, or simply by the Commissioner’s physical intervention, is a point of detail and does not significantly affect the substance of the story. The key point was that the Commissioner’s intervention precluded proper processes, including the breath-testing procedures, being followed.
175. In this case, Constable Main says he had detected a traffic offence (driving without lights) on a Saturday night, and had taken the trouble to collect his “sniffer” before Mr Doone’s intervention.
176. My discussions with five Wellington police officers at the Police function, and other discussions with Police officers, established that the proper process which officers “at the coal face” are expected to follow in circumstances in which the driver of a vehicle commits a traffic offence at night is to commence breath testing procedures.
177. This is also confirmed in the statement of Sergeant John Berwin Butson dated 5 December 1999 and the statement of Sergeant Simon Robert Paterson, also dated 5 December 1999, both of which form part of the Robinson and PCA inquiries. Their

statements reflect the "at the coalface" policy of breath-testing vehicles where they are stopped for traffic offences at night. [Produce copies of statements of Sergeants Butson and Paterson]

178. In this case, Constable Main had specifically stopped to get his "sniffer" which reflected his awareness of the relevant breath testing procedures
179. In addition, had Constable Main spoken with the driver in accordance with Police practice and procedure, he would have ascertained that Ms Johnstone had been drinking alcohol. There is no reason to think that Ms Johnstone would have lied.
180. In any event, I understand that routine use of the sniffer – as part of the breath testing/screening process - would disclose that she had been drinking too.
181. Thus, had Constable Main spoken with Ms Johnstone, the result would inevitably have been a further breath screening test. Such a test would have occurred but for the intervention of the Commissioner of Police.
182. In summary, the story taken as a whole was accurate. Mr Doone's intervention prevented officers from carrying out their lawful duties and carrying out breath testing procedures on Ms Johnstone.

Comments on the brief of evidence of Peter Doone

183. I have been provided with a copy of the signed brief of evidence of Peter Doone. There are a number of points which I wish to clarify, with reference to his brief of evidence.
184. At paragraph 11, Mr Doone says that it was later reported to him via the media that the time was about 11:00 pm. The source of that information was the 3 December 1999 statement released by police headquarters. My understanding is that that information would have been sourced from the then Police Commissioner himself.
185. Mr Doone makes a number of comments which I consider are contradicted by statements made by various witnesses, including Constables Main and Haldane, to the Robinson enquiry. I understand that those are matters which will be addressed by other witnesses and in submissions.

186. I note that Mr Doone's own memorandum, to which he refers at paragraph 48 of his brief of evidence, confirms that he shared the misunderstanding as to the time of the incident at the time he wrote that memorandum.
187. I do not accept that, as Mr Doone suggested in paragraph 3 of his brief of evidence, the matter took on a much higher media profile without of course "*principally*" by the *Sunday Star-Times* which were *speculative, incorrect and misleading*.
- 187.1 I do not accept that *The Sunday Star - Times*' coverage was speculative, incorrect or misleading. (And I reject the repeated allegations to similar effect in the balance of his brief of evidence.) I was closely involved in most of the coverage and object to the suggestions that the articles were speculative, incorrect or misleading. In any event, I note that the articles to which he refers are not the subject of this proceeding.
- 187.2 It is not accurate for Mr Doone to suggest that articles were principally by *The Sunday Star-Times*. This was a high profile media story, which was broken by the *Holmes* program and which was followed by most media outlets. I have recently obtained searches of the media coverage at the time – to put the article and the editorial in context:
- (a) Searches of the print media coverage at the time show that there were, in total, approximately 183 items in New Zealand newspapers in relation to the Doone election night incident (articles, editorials and letters to the editor), of which only 22 appeared in *The Sunday Star-Times*. I have obtained, from a Fairfax database, printouts of each of those 183 items. [Produce printouts of items].
 - (b) I have obtained copies of what I understand to comprise all of the TV New Zealand and TV3 reports in connection with the incident. There were approximately 25 items on TVNZ and 10 on TV3. [Produce copy transcripts].
 - (c) I have also obtained transcripts summary of the radio coverage in relation to the incident. There were approximately 203 items. [Produce transcripts.]

188. I do not accept that the articles published lacked balance and/or accuracy, as Mr Doone suggested in paragraph 54. Once again, I say no more than that, as this is not the issue arising in the proceeding.
189. The same applies to the suggestion that his integrity was being “impugned week after week in *The Sunday Star-Times*”. *The Sunday Star-Times* was only one of the media entities covering the story, and we did so professionally.
190. With reference to paragraph 57 of Mr Doone’s brief of evidence, I do not accept that his recollection of my message on his answer phone is accurate. My message would have stated, as I have said earlier in evidence, that I was writing a story which included part of the Constable’s evidence and that I had information to which I felt he needed to be given the chance to respond. In particular, I did not use the word “contest” in the message. I would not use that word in this context, as it has an adversarial connotation and would diminish the likelihood that Mr Doone would return my call.
191. With reference to paragraph 60 of Mr Doone’s brief, I have already explained earlier in my brief of evidence the steps which were taken by *The Sunday Star – Times* following receipt of Mr Doone’s general press release, to verify the accuracy of the allegations.
192. Furthermore, my 23 January article accurately reported Mr Doone’s statement that the previous week’s article had defamed him. An excerpt from the 23 January article reads as follows:

“A lawyer acting for Doone has threatened legal action against The Sunday Star-Times, claiming a report last week was defamatory. The letter says: “At no point in the current investigation has that officer even said anything that suggests that he conveyed to Mr Doone an intention to breath-test Ms Johnstone or that the officer had in fact tried to breath-test her”

Last night another lawyer for Mr Doone, John Upton QC issued a statement, saying “The commissioner did not see any breath-testing device on the constable. Neither was any request or attempt made to breath-test Ms Johnstone.”

193. Therefore, the article accurately and prominently reported – at the first possible opportunity after 16 January – Mr Doone’s position that he had been defamed and alerted readers to the fact that he contested aspects of the 16 January article.

194. At that time, it was not appropriate to retract the allegation as to what the constable had said (which had been balanced by the comments as to Mr Doone's position) since the accuracy of the statement had been re-confirmed, at the very highest level, by the Prime Minister.
195. I refer to the suggestion at paragraph 61 of Mr Doone's brief that *The Sunday Star-Times* staked out his/his partners house with photographers who pursued them taking photographs. This is incorrect. I reject any suggestion that Mr Doone and/or Mrs Doone were "pursued" at any stage and photographs were taken on only one occasion.
196. As I have mentioned previously, I was covering this story on behalf of *The Sunday Star-Times*. Further, *The Sunday Star-Times* has only one Wellington staff photographer, Kevin Stent. He was asked by Shayne Currie, to take a photograph in connection with this matter on one occasion only, on Saturday 18 December 1999.
197. Photographs were taken (I have seen them and at least one was published) on 18 December 1999. They were taken outside their house.
198. This was the first -- and only time that I am aware of Mr Stent being asked to take photographs for *The Sunday Star-Times* in connection with this matter. To my knowledge it is the only time that he took or attempted to take photographs of the couple.
199. As it happens, I was nearby when the photographs were taken. I had called in to see Mr Stent, who I work with often, to see how he was getting on. I also brought a couple of coffees, which we drank in the car. In the circumstances, I thought it was appropriate that I maintain a discrete distances when Mr and Mrs Doone emerged, so I went off (on foot) for a cigarette. In fact, I went into Tinakori Road and so I saw the Mr Stent take the photographs, albeit from distance.
200. So far as I am aware, no other attempt was made to photograph the couple or to "stake out" their home or their work places. I have made inquiries and, to my knowledge, no-one else acting on behalf of *The Sunday Star-Times* did either.
201. The only other visit to the Tinakori Road home address of which I am aware was by me, on 26 January 2000, when I hand delivered a letter addressed to Mr Doone and Mrs Doone. I delivered the letter to their mailbox, which could be accessed from Tinakori Road.

202. At no stage were either Mr Doone or Mrs Doone "pursued" by representative of *The Sunday Star-Times*.
203. This contention that "photographers" (in plural) were involved is also incorrect. Mr Stent was the sole photographer based in Wellington for the newspaper. Obviously I cannot exclude the possibility that other photographers employed by other media outlets may have tried to take photographs. But I can categorically state that he was the only *The Sunday Star – Times* photographer. Quite simply, there was no need to take further photographs of Mr Doone and Mrs Doone.
204. In paragraph 64 of his brief, Mr Doone suggests that he was powerless to defend himself. I do not accept that that is accurate. Mr Doone did, on several occasions, communicate with the media in relation to this issue. Such communications include comments he and his advisers made to *The Sunday Star-Times*, all of which were faithfully reported in full.
205. Also, on 21 December 1999, he responded to a New Zealand Herald editorial calling on him to resign, issuing a statement which was reported as follows:

"In both the issue of Incit and my involvement in a routine vehicle stop, formal enquiries are under way. There is a due process of law in New Zealand under which these matters are judged.

The full facts of both these issues are not currently in the public domain. Proper judgements cannot be made until all the relevant facts have been fully analysed through the legal processes now underway.

It is not appropriate for some commentators to take on the role of judge and jury on partial facts and speculation ahead of the outcome of those enquiries.

As New Zealand's Police Commissioner, I am subject to the law and I have a duty to uphold the integrity of constitutional processes. I am also entitled to be judged through these procedures.

Because they are still under way and no issues have been determined, I am unable to enter a public debate of the issues of this point. I would ask, therefore, the judgements or comments about these matters are not made until the full facts have been properly considered."

206. Mr Doone's statement suggests that he believes that neither he nor Mrs Doone could comment publicly during the Robinson enquiry. But, given Mrs Doone's significant media expertise, she will be aware that there are means available to have a person's perspective included in media reports, without being seen to be directly commenting in person.
207. Furthermore, I note that Mr Doone was, through his lawyer, quite prepared to make public statements before the Robinson and PCA reports had been made public. Those statements include the statements which were reported in the 16 January 2000 article and my 23 January 2000 article.
208. Finally, I reiterate that Mr Doone was given an opportunity after those reports had been made public, to comment further. He declined that opportunity.
209. In paragraph 65 of his brief of evidence Mr Doone states that he came to the conclusion, with reference to the Police Complaints Authority report, that "...my reputation for integrity was not seriously threatened." As I have indicated previously, I have obtained various documents pursuant to an official information act request, including a copy of the Robinson report. That states:

"The events ... on 27 November 1999 call into question the integrity of the New Zealand Police as characterised by the actions of Mr Doone, whatever his motive, and Constables Main and Haldane. Further, they cast doubt on the sincerity of the road safety messages conveyed to the public by the New Zealand Police and our partner road safety agencies.

This is entirely unfortunate. I find that Commissioner Doone's interactions were inappropriate...these matters are distressing for the potential they have to impugn the perception of the integrity of individuals and the New Zealand Police."

210. Whilst I accept that Mr Doone is entitled to his opinion as to the effect of the PCA report and the Robinson report, I am surprised that he reaches those conclusions given the findings in the report itself.

Comments on the brief of evidence of Robyn Doone (nee Johnstone)

211. I have also been provided with a copy of the brief of evidence of Robyn Doone
212. In paragraph 50 of her brief of evidence, Mrs Doone – similarly to Mr Doone – states that *The Sunday Star-Times* reporting was inaccurate, misleading, one-sided, I do not

accept this. But, again, given that the issues in this proceeding relate to the 16 January 2000 article and the 23 January 2000 editorial, I do not propose to respond in detail to those allegations.


213. In that same paragraph, Mrs Doone suggests that the articles contained innuendos that she was under the influence of alcohol to the extent that she should not have been driving and had probably committed an offence. I do not accept this.
214. The entire thrust of the articles was the fact that she had not been subjected to a breath-test examination when stopped. The point was that no conclusions could be drawn as to whether she was under the influence of alcohol to the extent that she should not have been driving or as to whether she had committed an offence: because there had been no testing. I most certainly did not intend to imply, nor do accept that I did imply, that Mrs Doone should not have been driving or had probably committed an offence.
215. From the first article that appeared with my by-line, dated 19 December 1999, and throughout my reporting on this matter, it was correctly and accurately stated at all times that Mrs Doone was not breath-tested, after Mr Doone spoke to the Constable.
216. I respond briefly to the suggestion, at paragraph 52, that this was a matter of "sensationalist reporting". The newspaper pursued this matter because it was of significant public interest. At no stage during the preparation articles on this subject was there any discussion with my supervisors or colleagues as the newspapers sales, or any need to continue investigating the subject in an attempt to sell newspapers. Such a claim demonstrates a serious lack of understanding as to the role the print media serves.
217. The Robinson report, for example, confirms the legitimate public interest in this matter, and states that the incident had the ability to affect public confidence in police and did indeed have such an affect. I do not understand Mr Doone, or Mrs Doone, to suggest that there was not a legitimate public interest in this story.
218. At paragraph 68, Mrs Doone suggests that there was some invasion of privacy by *The Sunday Star-Times* photographers (again plural) watching her house and car and following us to take photographs. As noted above, *The Sunday Star-Times* had only one Wellington press photographer and took only one set of photographs. If there were several incidents, and if those incidents did force Mrs Doone and Mr Doone to leave

Wellington, then they must have involved other media. They did not involve *The Sunday Star-Times*.

219. Nor do I accept her similar contention that she was “violated”, as she suggests in paragraph 69. I do not accept that – in these circumstances – a single set of photographs comprises a “violation”. And I note that other media had photographs and footage of the Doones.
220. The meeting in her office was the only time I have ever spoken to Mrs Doone in person. She does not mention that meeting in her brief of evidence. As I indicated earlier, I visited her at her office at Victoria University on 17 December 1999. I introduced myself and outlined my position as *The Sunday Star-Times* reporter. We had an amicable conversation. She declined to discuss in detail the events surrounding the vehicle. During this meeting I made it quite clear that I intended to look into the matter and was preparing an article.
221. Since that meeting, I have not seen her in any capacity. Nor have I spoken directly to Mr Doone since his decision to retire.
222. With respect to her suggestions that the coverage was “unbalanced” and/or “one-sided” I have outlined the extensive and regular attempts I made to report Mr Doone and Mrs Doone’s perspectives and points of view throughout this matter. Those extensive efforts culminated in the 26 January 2000 letter I hand delivered offering an extensive interview. Mr Doone stated that he could not speak during the Robinson enquiry, and this offer was made once the enquiry was complete and he was free to comment.
223. Mr Doone and Mrs Doone, rejected every opportunity to provide balance.
224. I also note that the focus of the stories, and in particular the focus of the 16 January 2000 article, was on Mr Doone and his conduct in the matter. The focus was never on Mrs Doone. Nonetheless, both of them were given opportunities to present their sides of the story and both of them declined to do so.
225. I wish to stress that despite my frequent requests for interviews, I did not invade Mr and Mrs Doone’s personal privacy. I did not attempt to approach them in person other than on the one occasion when I visited Mrs Doone at her office on 17 December 1999. As I noted above, that was a perfectly amicable conversation. I do not consider

that it was in any way inappropriate. All other communications were through other appropriate channels. I do not accept that there was any invasion of Mrs Doone's privacy or Mr Doone's.

Dated this 15 day of April 2005


Oskar Eduard Alley