

**Report of the Police Complaints Authority
following the Shooting of Keina Ronald Murray
by a Police Officer**

Introduction

At 0414 hours on Saturday 17 September 1994 a 111 call was received at the Whangarei Police Station from a woman resident at Pukepoto Road, Kaitaia, that a person seated in a Land Cruiser vehicle had been excessively revving the motor for the last 10-15 minutes.

In circumstances that will be set out in greater detail hereafter a local constable who had finished his normal shift at 0300 hours was called from his home and instructed to travel into Kaitaia to attend the incident. The constable will be identified throughout this report as Officer A. The constable went first to the scene at Pukepoto Road and observed a Land Cruiser vehicle stationary in the middle of the road with its engine running and he found aspects that made him uneasy and he drove from there back to the Kaitaia Police Station and obtained a portable radio and signed out a loaded .38 calibre Police revolver which he carried in a holster at his waist beneath his Police jacket. He was dressed in his uniform. The decision to take out a firearm was his and he did not consult a senior officer, or one more experienced than himself. Control of use of firearms by Police is dealt with hereafter.

He returned to the scene and there confronted the driver of the vehicle whom at the time he did not know but quickly he identified himself as Keina Ronald Murray, who is a resident of Kaitaia aged 22 years at the time. The first exchange between the two was verbal and took place at about 0442 but later this deteriorated into forceful physical confrontation. Details of the events will be described hereafter but at 0452 hours Officer A called Whangarei Operations reporting "I've just shot a guy" and made a request for an ambulance.

The ambulance duly arrived and Mr Murray was ultimately taken by helicopter to Auckland Hospital for urgent surgery. He had in fact been shot 3 times in the lower part of his body. Fortunately Mr Murray has made a fairly good recovery from his injuries. A recent medical

examination indicates Mr Murray has successfully resumed employment but has still residual disability from the wounds. There is no dispute but that the 3 shots were fired by Officer A.

Report to Police Complaints Authority and Preliminary Action

At approximately 8am on Saturday 17 September 1994 I was called by Superintendent Les McCarthy at my home and given brief details of the incident, some of which are recorded above in the Introduction. I was informed that Detective Inspector A J Collin was to take charge of investigating the shooting and to examine any criminal liability that might attach to the actions of the Police officer involved. The Region Commander, Assistant Commissioner Brion Duncan, had instructed Detective Superintendent Peter Ward, head of the Auckland City District CIB, to act under the supervision of the Police Complaints Authority in the investigation I decided to undertake.

The notification had been given to me in compliance with Section 13 of the Police Complaints Authority Act 1988 which requires the Commissioner to advise me of any death or serious bodily harm caused by a member of Police in the execution of duty. My decision, which I conveyed to the Commissioner upon notification of the incident, was to send Mr J N Roberts, a senior investigating officer with the Authority, to Kaitaia on Sunday 18 September to carry out a preliminary investigation and to confer with both Inspector Collin and Superintendent Ward.

I personally established immediate contact with Superintendent Ward and asked that he keep me closely informed as to progress in the overall investigation. Superintendent Ward faithfully carried out this request and I received a preliminary report from him dated 18 September 1994 on the incident. Even at this early stage a full investigation had begun and much preliminary work in that investigation by Police officers had been undertaken. Superintendent Ward had frequent consultations with me including a meeting in Auckland on 23 September when discussions took place about the progress of the investigation to that date, and future strategies.

I take this opportunity of stating that the overall Police investigation was very thorough but because some aspects were of particular trouble (one was the identity of the witness to some events before the actual shooting and referred to hereafter) and the necessity to obtain independent counsel's opinion, this report has been delayed longer than I would ideally have

wished. The total investigation files did not reach my office until mid-April at which time I was overseas and I did not return until early May.

Detailed Narrative of Facts

The factual background and events of the shooting incident have been covered in considerable detail in the separate reports of Superintendent Ward and Inspector Collin. As this is a public report I will traverse them here but I will condense the issues to the relevant facts. In any major investigation, as this was, for the sake of completeness many avenues are followed and a great deal of documentation generated, much of which need not be reproduced in this report.

At September 1994 Officer A had recently been posted to Kaitaia after graduating from the Police College three months before. Constables at the Kaitaia Police Station work a six week roster giving daily coverage. I will return to both these matters hereafter. On the night of 16/17 September Officer A was due to finish his shift at 0300 but to oblige a sick colleague he agreed to cover for him between the hours of 0300 and 0500. It was in this period the incident occurred and Officer A was called by Whangarei Operations. At the time of receipt of the call from the woman resident in Pukepoto Road it was considered by Whangarei to be a comparatively minor incident for which Officer A was trained and when spoken to he did not raise problems. However in the initial telephone call from Whangarei the operator did remark to the officer the situation was "a bit scary". As Inspector Collin said in his report, this seemed to plant in Officer A's mind unease.

The officer dressed in his uniform with jacket and left in his private car. He first went to Pukepoto Road to assess the situation. He stopped his vehicle some distance from the stationary Land Cruiser observing it was in the middle of Pukepoto Road. The engine of the Land Cruiser was running. Officer A said the situation made him uneasy and he then drove from Pukepoto Road back to the Kaitaia Police Station and obtained a portable radio, signed out and took possession of a fully loaded (six cartridges) .38 calibre Police revolver. The firearm that he had collected was placed in a holster on a belt around his waist and was concealed by the duty jacket he was wearing. The firearm was secured by a strap with the holster. He also took a marked Police vehicle and returned to Pukepoto Road.

With the exception of the driver of a vehicle whose presence played a role towards the end of the exchange between Mr Murray and Officer A there were no independent witnesses to the

substantial events. The role of that vehicle driver (who has never been positively identified but that will be dealt with hereafter) was short-lived and not directly about the physical confrontation, although he did overhear furious verbal exchanges between the protagonists and may possibly have had an obscured vision of the struggle. Neighbours were interviewed and many heard the shots and were able to give relevant information about time and intervals between shots. One witness observed Mr Murray walking to the Police vehicle. However the fact remains that the material accounts of the lead up to the shooting came from the two protagonists.

I now take up the narrative starting with the return of Officer A in a Police vehicle to Pukepoto Road at about 0442. At Pukepoto Road Officer A noticed the Land Cruiser had been moved since he last saw it to the grass verge on the left as he approached. He stopped his vehicle about 20 metres behind the Land Cruiser, leaving the lights of his vehicle on to provide illumination. As he approached he saw a man slouched in the driver's seat. Officer A enquired whether he was alright and was also given his name, Keina Ronald Murray. In the course of the conversation that followed Mr Murray told him he had been trying to get the vehicle started. Officer A asked as to his drinking and Mr Murray said he had had about "a dozen" which the officer took as a reference to beer. Constable A told Mr Murray he required him to undergo a breath screening test. Constable A said Mr Murray refused the test and he told him he required him to accompany him back to the Kaitaia Police Station to undergo an Evidential Breath Test. It seems Mr Murray agreed then, and accompanied the officer back to the Police vehicle and got into the passenger's seat. The Police vehicle could not be started as the battery was flat and the officer informed Mr Murray they both would walk to the Kaitaia Station several hundred metres away. At this point Mr Murray then announced he would not go to the Police Station and turned and ran off. Officer A gave chase in Pukepoto Road and caught hold of Mr Murray by his jacket. According to the officer, Mr Murray turned on him and knocked him to the ground and then set off again along Pukepoto Road. Officer A arose and gave chase. At this time another vehicle arrived driven by a single male occupant pulled up alongside the two running men. To that event I now turn.

The Third Vehicle in Pukepoto Road

Before dealing in detail with these particular events it is necessary to state that the accounts come from Officer A. and the unidentified witness himself. It is appropriate here to record that Mr Murray gave only one statement to the Police which was whilst he was in hospital on 19 September 1994. The statement was the result of an interview by Detective Inspector G R

Jones taken in the presence of two legal advisers acting for Mr Murray. Mr Murray says he has no recollection of these particular events and therefore he can contribute nothing to this aspect. After the interview with Officer A. the existence of this event became known to the investigators and Superintendent Ward and other Police investigators made determined efforts to establish the identity of this person and to arrange an interview with him. On 21 September 1994 Superintendent Ward was contacted by an Auckland barrister, Mr Michael Levett, who said he had been approached by the driver of the third vehicle in Pukepoto Road and that he (the barrister) was to provide information to the Police concerning the incident upon condition that the Police did not actively pursue him for interview and upon the basis that he retained his anonymity. This avenue proved to be the only one available to the Police to obtain the information from the witness. The report of Inspector Collin records that the Police have a name whom they believe to be that of the unidentified witness and have made attempts to interview this person. However this person is adamant that he will not answer any questions about the incident or admit that he was the witness.

Officer A. was chasing Mr Murray along Pukepoto Road when the third vehicle appeared alongside them and ultimately stopped in the roadway about opposite the shed where the shooting took place. The third vehicle had travelled from north to south passing the other two vehicles as he did so. When the vehicle stopped Mr Murray opened the right rear door and tried to get into it. Officer A. remained in pursuit in and around the vehicle endeavouring to apprehend Mr Murray. Mr Murray asked the driver to get him away. The driver, as recorded in the barrister's letter, said he witnessed Officer A. trying to trap Mr Murray by slamming the rear door on his legs. At one stage the driver said he heard Officer A. say "*You fucking black bastard*". He saw Mr Murray then run across the road to the fence of Kaitaia College and either climbed or fell over it followed by the officer. Both moved towards the shed. I now reproduce the remainder of Mr Levett's letter:

"15. As the officer was getting to his feet he called out "You fucking black bastard, I'm going to kill you. Stop before I shoot you". The victim at this stage had started to run off although they were both still within my client's clear view, directly across the road from his vehicle.

16. The officer ran off behind the victim and within a second or two there was a loud bang, the first shot. At the time of this first shot the two men had run out of sight but would have been behind the shrubbery along the fence line, before they reached the sports shed.

17. The officer then called out "I'm going to shoot you. I'm going to shoot."

18. *The victim then said, "Ah, fucking shoot me then."*
19. *There was a pause of about two seconds then another shot.*
20. *Immediately after the second shot the victim said "Ah, fuck you, why don't you just shoot me in the fucking head." The officer said "I will." and this was immediately followed by the third shot.*
21. *My client remained beside the car for about another five seconds, reflecting upon what had occurred. He became concerned for his own safety and drove off.*

I cannot overemphasise how my client's concern regarding the effects of his identification in this matter and, as discussed, I ask that no steps be taken to make contact with or to identify him other than as may be later agreed between us."

It cannot be denied that there are in those statements by the unidentified witness, very damaging remarks from Officer A's viewpoint as to his potential liability for criminal charges. There are allegations that Officer A. used obscene racially abusive epithets and disclosure of his intention that he was going to kill Mr Murray. The content of the statement by the witness confirms that he not only was able to give evidence of what occurred inside and outside the immediate vicinity of his car, but also as to what occurred when the Officer and Mr Murray closed on each other near the sports shed and when the shots were fired. Some of the statements of what he said he heard Mr Murray say during the confrontation are in fact recorded as statements made by Mr Murray when interviewed. The statements recorded in paras 17 and 18 are largely in accord with the statements made by Officer A. and Mr Murray himself and the statement in 20 about "shooting in the head" was recorded by Officer A.

This evidence must now be assessed in the light of all the surrounding circumstances of the case and in particular the way it came into possession of the Police investigators. The witness himself chose to act through an intermediary and insisted on his anonymity being retained and also he has refused ever to be interviewed by Police investigators. That position is unchanged. Those circumstances must gravely affect the credibility and overall acceptance of that evidence in the totality of the events. Furthermore, Officer A. strongly denies that he ever used any racial epithets directed towards Mr Murray and in particular that he ever used the words "*You fucking black bastard I'm going to kill you*". Another central feature in the assessment of credibility is that Mr Murray himself states he has no recollection whatsoever of the whole incident or the intervention of a third vehicle and driver. Furthermore when Mr Murray was interviewed on 19 September he made no allegation that he had been the subject of verbal racial abuse by Officer A.

At my request an independent barrister, Mr Paul Davison, practising on his own account in Auckland, was instructed to examine the complete Police investigation to decide whether or not in his opinion criminal charges should be laid against Officer A. arising out of the events. His opinion that no charges should be laid against Officer A. is dealt with hereafter but at this point it is relevant to note that Mr Davison said that he was of the opinion that the material supplied by the unidentified witness through the intermediary of a barrister should for the purpose of any determination of whether there is just cause to suspect that an offence was committed by Officer A. be put to one side. As I interpreted his opinion, Mr Davison nevertheless considered that the information was significant and should be carefully viewed by the Police when assessing other evidence in the case. With those comments by Mr Davison I am in full agreement.

Continuation of the Narrative of Facts

Apparently whilst Mr Murray was endeavouring to move from the rear seat to the front seat under pursuit by Officer A. he exited the vehicle from the driver's side and ran off again. The two met at the side of a shed on the school grounds very close to the roadway where the struggle about to be described took place.

The confrontation commenced with Officer A. being pushed by Mr Murray with a struggle ensuing. The struggle was fairly short and took place on the south side of the sports shed in the Kaitaia College grounds very close to the fence along Pukepoto Road. Across the roadway there is a line of conventional residences and many of the occupants were interviewed who were able to give accounts of mostly what they heard by way of shots and approximate times. Given the usual discrepancies encountered when separate witnesses give their respective accounts, nothing was revealed that was materially inconsistent with the facts discovered as a result of the investigation.

The account of the actual struggle given by Officer A. is reproduced hereafter and the statement of Mr Murray is not different in any material sense. The essential matters are not disputed which are the events that led to the struggle and that as a result Officer A. fired three shots in the course of the struggle from the revolver he was carrying and that Mr Murray suffered fairly serious injuries from two of the shots requiring urgent surgical treatment.

Events following the Shooting

Immediately Officer A. was assured that Mr Murray had been physically subdued he established communication via the Kawakawa Police radio with Whangarei Police Operations and I now reproduce the record of the exchanges as they are in my view relevant:

0452.25 hrs OFFICER "A"	<i>Operations KTR. (Note of explanation - KTR is the usual call sign for the Kaitaia incident car)</i>
0452.34 OFFICER "A"	<i>Operations KTR</i>
0452.40 hrs KAWAKAWA POLICE RADIO	<i>KTR, from Kawakawa.</i>
0452.42 hrs OFFICER "A"	<i>I've just shot a guy.</i>
0452.46 hrs KAWAKAWA POLICE RADIO	<i>Confirm that you've shot a guy.</i>
0452.50 hrs OFFICER "A"	<i>Roger, he's on Pukepoto Road, he'll need an ambulance.</i>
0452.55 hrs KAWAKAWA POLICE RADIO	<i>Get on to Operations.</i>
0453.02 hrs OFFICER "A"	<i>Operations KTR</i>
0453.05 hrs WHANGAREI OPERATIONS	<i>KTR</i>
0453.07 hrs OFFICER "A"	<i>I just shot a guy, he'll need the ambulance. He's on Pukepoto Road. The battery on my car's gone dead.</i>
0453.14 hrs WHANGAREI OPERATIONS	<i>10/4 that? (Note of explanation - 10/4 means repeat message)</i>
0453.17 hrs OFFICER "A"	<i>I've just shot a guy. He'll need an ambulance. He's on Pukepoto Road. ... by the college.</i>
0453.26 hrs WHANGAREI OPERATIONS	<i>Roger, copy KTR.</i>
0453.32 hrs WHANGAREI OPERATIONS	<i>Sitrep please.</i>
0453.36 hrs OFFICER "A"	<i>He grabbed hold of me and I warned him several times to let</i>

go and he wouldn't. He was asking to be shot. ... eventually I had to, to save myself.

0453.47 hrs
WHANGAREI
OPERATIONS

Roger, copy, stay where you are, we'll get staff to you.

0457.57 hrs
OFFICER "A"

Operations KTR.

0458.07 hrs
WHANGAREI
OPERATIONS

KTR, OPS.

0458.07 hrs
OFFICER "A"

An ambulance on the way?

0458.10 hrs
WHANGAREI
OPERATIONS

Yeah affirmative mate. Just ah, stand by there mate.

At 0530 hours on 17 September Officer A. prepared an extensive note of the events as he recalled them, which was little more than half an hour after the shooting had ended the struggle. Furthermore on 17 September 1994 Officer A. again made a written statement detailing the events as they had occurred. Those two statements give a very detailed account from the Constable's viewpoint. He did not materially alter his account but as the first statement immediately after the event is likely to be the less considered one, I reproduce the essential parts starting with the confrontation beside the shed:

"When we were struggling beside the shed I had one hand on him (my left hand) which I was pushing him away with. I told him I would shoot him if he didn't stop but he kept on at me. I warned him several times altogether. I drew my gun and held it far back from him with a bent elbow to try to stop him from grabbing it. I pointed it at him and warned him again. When I drew the gun I didn't expect to have to use it. I warned him many times. I feared that he might reach and grab the gun. I didn't want him to get a hand on the gun because I thought he would probably shoot me if he got control of it. I thought I should probably shoot him but I held off and warned him. I held the gun as far away from him as I could but he was reaching forward and saying "shoot me then". He asked me to shoot him a number of times. He told me to shoot him in the head. Sometime in the midst of this I pulled the hammer back so I could shoot more easily. He was on the shed side of me. I feared for my safety and shot him low down.

I didn't want to kill him. I just wanted to stop him to keep myself safe. The first shot didn't seem to affect him much. I think that is when he asked me to shoot him in the head but I'm not sure. I thought the first shot may have missed or gone between his legs or something because he still had a hold of me. I shot him twice more on separate occasions. Somewhere between them, I warned that I would shoot again but he kept hold of me and I still feared for my safety. After the third shot he went down - I think on his knees and leaned forwards, but he was still struggling. I put my left hand on his neck and pressed my thumb in hard to try and cut off his blood to his head and subdue him. He let go and I backed off. I told him I was going to call an ambulance. I left

him lying there and went back to the car to call Operations for an ambulance. I still didn't know I had the radio in my pocket. After calling Operations I went back to him and told him the ambulance was on its way. As I was driving the "I" car to the Incident I determined to only use the gun in self defence. Now I think I should have actually shot the guy sooner. I endangered myself by holding off so long. I shot him low in the body deliberately all 3 times because I didn't want to kill him, I just wanted to stop him from getting his hand on the gun and using it on me."

Condition and Treatment of Keina Ronald Murray

After the shooting Mr Murray was uplifted by an ambulance and taken to Kaitaia Hospital to stabilise his condition before he was transferred to Auckland Hospital by helicopter where he underwent surgery for injuries he had received as a result of the shootings.

At the Auckland Hospital Mr Murray was examined by two surgeons, Mr John Windsor and Mr Ian Civil. He was operated on by Mr Windsor assisted by Mr Civil and they both described the wounds suffered by Mr Murray. There is ample evidence from the statement of Officer A. and from those of other witnesses who heard shots that three were discharged from the .38 revolver fired by Officer A. The examination of Mr Murray confirmed this. One wound was located above the left hip and there was an exit wound in the left buttocks. It was the opinion of the surgeons that the wound above the left hip was superficial and caused little damage. It was the opinion of Mr Civil that this wound would not have affected Mr Murray other than to cause some pain and discomfort. This wound has been described throughout the reports as 'Wound A'. Also it probably was the first bullet fired by Officer A, although Mr Civil said this wound could have been either the first or third shot that was fired.

The two other wounds described as 'B' and 'C' had entry wounds in the right thigh. For the lower wound the bullet was probably fired from below in an upwards trajectory. The bullet passed through the thigh and then exited the right buttocks and re-entered the body at the left buttock near the anus. It travelled through the left buttock and exited the body. This bullet made a hole at entry, then two more wounds at exit and re-entry in the buttocks area and again finally at exit. There were four wounds in all. For the other entry wound (upper) on the right thigh, the bullet travelled into the abdominal cavity passing through the bladder and punctured the small bowel. It travelled through the left buttock and exited near another in that area. There were altogether three exit wounds on the left buttock. The lower one near another at the top of the buttock was thought to be Wound A.

The clothing worn by both Officer A. and Mr Murray was examined by a scientist, Mr K A J Walsh of the Mt Albert ESR.

Mr Walsh found on Mr Murray's clothing only two bullet entry holes which were in the front right leg at about crotch level and seven centimetres apart. From reading the medical reports Mr Walsh said they corresponded with shots B and C and exited close together at the top left of the rear of the jeans. Mr Walsh was of the opinion that the position supported the proposition that the shots were fired with the revolver and Mr Murray in very similar respective positions. If Mr Murray were standing when shot the direction of shots is upward and angled from Mr Murray's right to his left.

Mr Walsh could find no entry hole in the clothing for wound A and concluded from this and an examination of the wound on Mr Murray that the skin was exposed to the shot at the moment it was fired from a very close quarter. Mr Walsh thought this strongly supported the proposition that there was a struggle taking place when shot A was fired. There was an exit hole in the rear left pocket of the jeans located 17 centimetres from the top of the jeans and eight centimetres from the centre of the jeans. The path of the bullet from the left hip to the left buttocks was downwards and strongly supports the proposition this was the bullet recovered from the ground by the shed wall according to Mr Walsh.

Mr Walsh examined the jacket worn by Officer A. and found damage at the bottom front centre of the jacket which was the result of a very close shot. From Mr Walsh's examination of the entry and exit holes in the jacket he said in his opinion the location of the holes meant that the bottom of the jacket must have been held away from the officer by another person during the struggle. He said it was most unlikely that the officer would be holding his own jacket in this manner when firing a shot.

Police Investigations, Findings and Commissioner's Report to the PCA

I have remarked earlier in this report that the investigations carried out by the Police have been thorough and extensive. It would serve no useful purpose in this report to overload it with excessive detail. The main issues not already dealt with are in my opinion:

A. Firearms used by Police and in particular:

- (i) Issue of firearms by Police under General Instructions.
- (ii) Carrying of firearms by Police.
- (iii) Use of firearms by Police.
- (iv) Maintenance training in firearms.

- (v) Firearm examination.
- B. Relevant record and firearms training of Officer A.
- C. Rostering of staff at Kaitaia.
- D. Relevant record of Keina Ronald Murray.
- E. Commissioner's decision.

A. Firearms Used by Police (General)

The policy, practice and procedures of the NZ Police relating to the carriage of a firearm by an officer are governed by General Instructions. It is well known that the NZ Police are not armed as a matter of course but have availability to arms under a fairly strict regime when the use of firearms is deemed necessary. General Instruction F60 deals with "Carrying of Firearms by Police". In the circumstances revealed by this particular case the relevant part is:

"(2) A member may carry firearms in the following circumstances:

- (a) When it is expected on reasonable grounds that any of the circumstances referred to in General Instruction F61 may be encountered. If an authorising officer is not readily available members may exercise their own discretion, but shall advise their supervising member at the first reasonable opportunity that they have done so."*

Later in this report I refer again to this GI F60(2)(a) and in Conclusions.

The actual use of firearms by Police is then covered by General Instruction F61. The General Instruction commences by warning members of the responsibility for the use of any excess force and the fact that a firearm should not be used unless it can be done so without endangering other persons. Then more specifically F61(2) states:

"Police members shall not use a firearm except in the following circumstances:

- (a) to defend themselves or others (section 48 Crimes Act 1961) if they fear death or grievous bodily harm to themselves or others and they cannot reasonably protect themselves, or others in a less violent manner."*

There are other General Instructions related to arrest (Section 39, Crimes Act 1961) and prevention of escape (Section 40, Crimes Act 1961) which need not be detailed here but are covered in the report of the independent barrister, Mr Davison, mentioned hereafter.

There is one General Instruction, F61(3), which imposes further requirements on a Police officer and are relevant here:

“In any case an offender is not to be shot:

- (a) Until he has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so.*

AND

- (b) It is clear that he cannot be disarmed or arrested without first being shot.*

AND

- (c) In the circumstances further delay in apprehending him would be dangerous or impracticable.”*

(i) *Issue of Firearms*

The issue of firearms is covered under General Instruction F59(6) but need not be detailed here. Each Police Station must keep a Firearms Register where it is necessary to record certain details such as the serial number of the firearm drawn, the date it is done, the time, and the number of rounds issued etc.

Officer A. completed the Instructions correctly for drawing the firearm excepting where he was to place the serial no. of the firearm he entered his own registered number and it was thought this was due to inexperience rather than anything else. All other details were correctly entered before he left for Pukepoto Road.

(ii) *Carrying of Firearms by Police*

As stated above, General Instruction F60(2) covers the circumstances of when an officer may carry firearms. Superintendent Ward examined the circumstances that confronted Officer A. at Kaitaia on 17 September and pronounced himself satisfied that Officer A. was justified in carrying a firearm and then set out his reasons in his written report. He emphasised the time at 0416 hours when he received the call at his home from the Whangarei operator who said "... a woman, scared from the address." He further noted the preliminary observation made by Officer A. when still in his own private vehicle prior to going to the Station and there making his final decision to draw a firearm. Also at the time of signing out the firearm Officer A. recorded the reason as "1C being a suspicious vehicle or person".

(iii) *Use of Firearms by Police*

General Instruction F61 states that members must always be aware of their personal responsibilities in the use of firearms. Under Section 62 of the Crimes Act 1961 a member is criminally liable for excess force. An overriding requirement in law is that minimum force must be applied to effect the purpose. Police should not use a firearm unless it can be done without endangering other persons. There then follow circumstances in which a firearm may be used and they have been referred to earlier.

Superintendent Ward, whilst leaving the final decision to counsel whose opinion had been sought on the question of criminal liability, drew attention in his report to the

recorded conversation of Officer A. at 0453 hours after the shooting, which was as follows:

“I’ve just shot a guy. You’ll need an ambulance. He’s on Pukepoto Road by the College. He grabbed hold of me and I warned him several times to let go and he wouldn’t. He was asking to be shot eventually I had to save myself.” (The more extensive record of this conversation has been reproduced earlier).

(iv) *Maintenance Training in Firearms*

In August 1993 a new policy was introduced to the NZ Police in respect to firearms maintenance training. That policy recognised the need for specialised maintenance training and eligible staff are currently receiving that training throughout New Zealand. The Firearms Maintenance Training Guidelines are covered by General Instructions F181 to F187.

Officer A. graduated from the Royal NZ Police College on 17 June 1994. During his six months training, Officer A. received specific firearms training. His final mark was 96.45% and the overall assessment was favourable and particular comment was made that he was a conscientious student who made a positive contribution to the course. His skill level in firearms was reckoned to be at a very good standard which was reflected in his final result. The firearms training of Officer A. as at 17 September 1994 was in accordance with Police policy.

(v) *Firearm Examination*

The firearm used by Officer A. to shoot Mr Murray was examined by Mr Robert Ngamoki, a Police Armourer. The weapon and ammunition conform to approved Police specifications. Mr Ngamoki supplied a report of his firearm examination which found the revolver was mechanically safe and serviceable.

B. Relevant Record of Officer A.

The personnel file of Officer A. held at the Northland District was examined by Superintendent Ward. The file was consistent with the brief service in the New Zealand Police of Officer A. and consisted primarily of his basic course assessment and personal report. Nothing of relevance to the enquiry was noted.

C. Rostering Staff at Kaitaia

Constables at the Kaitaia Police Station work a six week roster giving daily coverage. On Monday, Tuesday, Wednesday and Sunday of night shifts staff finish at 0300 hours and the officer rostered for night shift is the on-call officer until 0500 hours and then the early shift officer due to commence at 0700 hours is on call. The name of the on-call duty officer is advised to the Operations Room at Whangarei in case a call-out is required. Normally each shift has one officer working, however, when inexperienced staff arrive they are paired with a more senior officer until they are considered capable of working by themselves.

It has already been recorded in this report that another constable had been rostered on the night shift, 16-17 September 1994, from 2100 to 0500 hours. In the early hours of 17 September a request was made by him to Officer A. to take calls for him in the period 0300 to 0500 hours so that the said constable could go home. Officer A. agreed to this and Whangarei was advised that Officer A. would be on-call from 0300 hours to 0500 hours at which time the early shift constable would be on-call prior to commencing duty at 0700 hours. The said constable and Officer A. completed duty at 0300 hours on the understanding that Officer A. would cover the next two hours which he was required to do as set out earlier. It was considered by Superintendent Ward that on this occasion Officer A. responded to a known call back situation for which by then he had been properly trained. I make some observations about this later in this report.

D. Relevant Information of Keina Ronald Murray as at 17 September 1995

I deal here with the relevant information about Mr Murray for this inquiry and report. At the date 17 September 1995 Mr Murray was a disqualified driver, and he was on bail from the Court having been committed for trial on an unrelated matter. The bail terms were fairly strict and when first encountered by Officer A. he was in breach of his bail terms. Furthermore there is little doubt in the circumstances that he was attempting to drive a motor vehicle. Officer A. had reasonable grounds for suspecting his consumption of alcohol was excessive and he attempted to test him. In fact his blood was taken some two hours after the incident and his blood/alcohol level on analysis was 171 milligrams of alcohol per 100 millilitres of blood. A scientist who examined the results and other information said in his opinion the reading would have been appreciably higher at over 200 milligrams at the time of the incident.

I understand a decision has been made by Police not to lay charges against Mr Murray arising out of his part in the events of 17 September.

E. Commissioner's Decision

The two reports prepared respectively by Detective Inspector Collin and Detective Superintendent Ward were with all accompanying documentation and photographs sent to the Internal Affairs Division at Police National Headquarters, Wellington, where an assessment is made of the recommendations of each of the chief investigating officers. Available to Internal Affairs was independent counsel's opinion as to the possible criminal liability of Officer A. An important aspect of the review carried out at Internal Affairs is to ensure the investigations by the chief Police investigators have been thorough and complete. I was advised on behalf of the Commissioner that he accepted the investigations carried out by the nominated officers and that the decision of the Police was to accept the opinion of Mr Davison and that no criminal action would be instituted against Officer A. arising out of the shooting on 17 September 1994.

Murray Family Press Release

In a media release dated 21 September 1994 signed by Mr Murray himself, his mother and five other members of the Murray family, the following statement was made by them:

21/09/94

MURRAY FAMILY PRESS RELEASE (KAITAIA POLICE SHOOTING)

THE IMMEDIATE FAMILY OF KEINA MURRAY WISH TO MAKE THE FOLLOWING STATEMENT SURROUNDING THE RECENT POLICE SHOOTING IN KAITAIA.

FIRSTLY NONE OF THE MURRAY FAMILY, INCLUDING KEINA MURRAY WISH TO BE INTERVIEWED BY THE MEDIA IN RELATION TO THIS UNFORTUNATE MATTER AND THEY REQUEST THAT ALL QUESTIONS OR INQUIRIES IN FUTURE BE PUT THROUGH THEIR LEGAL REPRESENTATIVE (CHRISTOPHER HARDER).

YESTERDAY AFTERNOON AN ORAL UNDERTAKING WAS RECEIVED BY CHRISTOPHER HARDER FROM COMMISSIONER OF POLICE RICHARD MACDONALD THAT "THE POLICE AND THE POLICE COMPLAINTS AUTHORITY INVESTIGATIONS WILL BE DIRECTED AT POLICE POLICY AND PROCEDURE IN TRAINING IN RELATION TO THE CARRIAGE AND USE OF FIREARMS BY MEMBERS OF THE NZ POLICE, AND THAT SUCH PROCEDURES WILL BE CHANGED FORTHWITH SHOULD THE INVESTIGATIONS DEMONSTRATE THAT ANY OF THE CURRENT PROCEDURES ARE INADEQUATE."

THE MURRAY FAMILY APPRECIATES THE UNDERTAKING BY THE COMMISSIONER OF POLICE TO CHANGE THE 'CARRIAGE AND USE OF FIREARMS PROCEDURES' IF THEY ARE FOUND WANTING, BUT THEY ALSO WISH TO STATE THAT FROM THEIR OWN PERSONAL EXPERIENCE THEY DO NOT BELIEVE THAT YOUNG INEXPERIENCED CONSTABLES SHOULD BE REQUIRED TO ATTEND EARLY MORNING INCIDENTS CARRYING A LOADED PISTOL UNLESS A MORE SENIOR POLICE OFFICER IS ALSO PRESENT.

NATURALLY THE MURRAY FAMILY IS CONCERNED THAT AN UNARMED MEMBER OF THEIR FAMILY WAS SHOT BY A MEMBER OF THE NEW ZEALAND POLICE FORCE. THE FAMILY FEEL DEEP HURT. THEY ALSO APPRECIATE THAT THE CONSTABLE AND THOSE CLOSEST TO HIM MUST ALSO BE AFFECTED BY THIS MOST UNFORTUNATE INCIDENT. THE FAMILY ALSO WISH TO EXPRESS THEIR THANKS TO THE MANY PEOPLE WHO HAVE CALLED OUT OF CONCERN.

KEINA MURRAY ACKNOWLEDGES THAT HIS ACTIONS IN THE EARLY HOURS OF THE MORNING OF THE 17TH OF SEPTEMBER 1994 WERE INAPPROPRIATE.

WE HAVE ALL LEARNED SOME VALUABLE LESSONS IN RELATION TO WHAT IS AND WHAT IS NOT ACCEPTABLE BEHAVIOUR AS A RESULT OF THIS INCIDENT.

FOR ALL THE ABOVE REASONS KEINA MURRAY AND HIS IMMEDIATE FAMILY NOW WISH TO EXPRESS THEIR VIEW. THE MURRAY FAMILY WILL NOT BE PURSUING CRIMINAL CHARGES AGAINST THE CONSTABLE. THEY BELIEVE THE YOUNG CONSTABLE, LIKE KEINA MURRAY AND HIS FAMILY, HAVE SUFFERED ENOUGH.

MOTHER HILDA MURRAY
(signed)

KEINA MURRAY
(signed)

MICHAEL MURRAY
(signed)

CHRISTOPHER MURRAY
(signed)

STEPHEN MURRAY
(signed)

ELLEN MURRAY
(signed)

HERBERT MURRAY
(signed)

In my view that is a generous and very charitable stance for Mr Murray and his family to take over the most unfortunate occurrence of some four days earlier. The views of the family have been given by me careful consideration and utmost respect and are reflected in the recommendations I make hereafter.

Independent Counsel's Opinion

I think it helpful if I clarify the role of the Police Complaints Authority for an incident such as exists here. There has been no complaint made by any person about Police conduct and therefore my function is pursuant to Section 13 of my enabling Act. I have supervised the Police investigation and on its completion I conduct an independent civilian oversight of the investigation and its findings and if thought appropriate make recommendations. For those investigations of incidents of more than usual public interest, in which I categorise this one, I publish a report with the findings I make.

Generally speaking the Police investigate suspected crime and decide whether to lay charges. When the behaviour of one of their own members is involved in a serious incident the circumstances of which may raise possible criminal liability, then I have in the past deemed it essential for the maintenance of public confidence that the exercise of the discretion whether to lay charges or not should not be that of the Police service alone but should be done after the receipt of an independent opinion by a barrister qualified in criminal law. This course ensures a disinterested, independent scrutiny of all relevant evidence.

After consultation with the Solicitor General it was agreed that Mr Paul Davison, barrister of Auckland, possessed the necessary qualifications and his opinion was sought whether criminal charges should be laid against Officer A. Mr Davison has had made available to him the entire documentation of the Police investigation. It comprised the same material that was placed first before Internal Affairs and then before me for this review and findings.

Mr Davison submitted a lengthy (25 page) opinion dated 21 March 1995 which testified to a thorough examination of the investigation and its findings. I now reproduce the most relevant part of his opinion.

“12.0 CONCLUSION AND OPINION

12.1 In the present case I consider that the explanation given by Officer “A” is confirmed and corroborated by a number of independent areas of Police enquiry being scene witnesses and expert witnesses.

12.2 The information provided by Mr Levett's client, provided that all proper and reasonable attempts have been made to locate and interview that person, must properly be put to one side in the exercise of the discretion to prosecute or not, as that “witness” is not available to the prosecution, and there is no satisfactory means of assessing the authenticity or reliability of that account. In fairness, I

should add that that account was put to Officer "A" who denied having said the words alleged.

12.3 I note that Mr Murray and his family issued a "Press Release" on 21/9/94 (signed by Mr Murray) in which it was said:

"Keina Murray acknowledges that his actions in the early hours of the morning of the 17th of September 1994 were inappropriate"

and:

"The Murray family will not be pursuing criminal charges against the Constable..."

The position taken by Mr Murray suggests that he recognises that his actions contributed to the situation wherein he was shot.

12.6 The issue is whether there is sufficient or adequate basis for the formation of a reasonable cause to suspect the commission of an offence. In the present case all the material and evidence collected by the Police upon which that issue stands to be determined, all tends to confirm or corroborate the account and explanation given by Officer "A" that he was acting in self defence. In my opinion and for the reasons expressed above, I consider that the force used and the manner with which it was used was reasonable having regard to the circumstances that Officer "A" believed them to exist at the time.

In conclusion, it is my opinion that there is no evidence that Officer "A" committed any unlawful act or criminal offence in the circumstances of his shooting Mr Murray whilst acting in self defence on the 17th of September 1994."

Conclusions

I repeat that there has been no complaint of misconduct on the part of the Police from Mr Murray himself or the family, or any other person. It is undeniable that the family in their media release made reasonable critical comments about Police policy and procedure which I have noted and will return to.

I carried out an investigation in conjunction with the Police into the circumstances surrounding the incident because I was satisfied there were reasonable grounds in the public interest for an investigation and also for that reason I am publishing this report.

I record here that I accept the decision of the Commissioner not to lay criminal charges based on counsel's opinion bearing in mind the attitude of the injured person and his family. I therefore put that matter to one side.

Notwithstanding the foregoing I am still able following an investigation to form an opinion whether or not the overall incident requires some recommendations on policy, practice and procedure for the future. This was specifically requested by the Murray family.

To my mind the central features of this incident are as follows. A member of the public reported an incident in the early hours of Saturday morning that alarmed her and that it was annoying. She said she was on her own and would not go and investigate herself. Officer A. was called out. It is fair to state other than creation of noise nuisance at a very inappropriate time when most are sleeping there were no other objective features which might suggest deeper or more sinister implications. Officer A. turned out, remembering he had already performed a full shift. Officer A. had been working with another officer for whom he had agreed to cover but that officer before going off duty had said to Officer A. in the event of anything major he would be able to come back and assist him. I think Officer A. should have called on him after receipt of the call. He surveyed the scene at Pukepoto whilst still in his own vehicle and said the scene made him uneasy. At this time the Land Cruiser was in the middle of the road stationary. He then returned to the Police Station and of his own decision without reference to a senior officer or any other person drew from stores a loaded revolver. Officer A. returned to Pukepoto Road and there confronted Mr Murray. It is beyond question that Mr Murray was not armed and in the time available Officer A. would have been able to establish that fact. A physical confrontation occurred away from the Land Cruiser and by Officer A's own account what he feared was that Mr Murray might wrest his own gun from him and use it on him. I do not think Officer A. should have drawn a sidearm and carried it on his person to the first encounter at the roadside. I therefore find myself in disagreement with Superintendent Ward's view. If he had taken the gun it should have remained in the Police vehicle where he could have had almost immediate access to it if a cautious preliminary investigation revealed that was necessary.

Officer A. at this point of his career could fairly be described as very inexperienced, having graduated from the Police College only three months earlier. I have every sympathy for Officer A. but I do not think he should have drawn a sidearm without some check on his own judgement, no matter that he was not strictly in breach of General Instructions. In making this observation I am not overlooking material physical dangers that frontline Police officers face in situations not dissimilar to this one. There has been a recent case where on a country road a Police officer was chased by a person with a gun, and in another case a Police officer lost his life.

In my view Police policy and administration must re-examine the surveillance and control that is available to young and inexperienced constables engaged in frontline duties but especially in regard to those of firearms. No area could be more fraught with dangers and accidents than use of firearms. Once an officer takes the step of carrying firearms, but particularly sidearms which have the feature of ready accessibility, there is created an inherently dangerous situation. For the sake of clarity I regard the decision to draw and carry a sidearm as in a different category from what occurred in the actual struggle and requiring a different analysis.

It is no part of my function to enter the debate on the routine arming of officers on the beat or frontline duty. However it is pertinent to my call for greater control on issue of firearms to young and inexperienced officers that very recently in England and Wales it was the Police officers themselves on an extensive canvass rejected routine arming and voted 79% to maintain the status quo. The Chairman of the Police Federation named it a complex issue but called for greater protection through better training among other matters. For myself I think it is a fair inference that the size of the vote for rejection indicates that Police in England and Wales themselves recognise the dangers of carrying arms. When guns are readily available there is always the danger of accident and error. Training in using guns involves in my view training to assess situations whether guns should be carried at all. This is the area I pinpoint as a deficiency in the General Instructions, especially in relation to inexperienced young officers required to operate so often alone in small population centres.

When the situation faced by Officer A. on this occasion is measured against the content of the current Police General Instructions it is apparent that an officer of very limited frontline experience and facing a possibly difficult situation without the benefit of direct supervision or guidance is not best served by their present form. To be more precise I do not believe General Instruction F60(2)(a) [reproduced earlier] gives sufficient direction about carrying of firearms and particularly on the person as a sidearm.

I remain unconvinced that such a recent graduate from training, after a few brief weeks of frontline service, has the ability to make the calculated and careful assessments necessary to decide whether a situation is of a sufficiently grave or exigent nature to demand that he personally arm himself. Some situations may clearly be so, but I here reflect that the resources are then available in the form of trained Armed Offenders Squads.

The Police General Instructions adequately deal with the carriage of firearms in Police vehicles. However there clearly is a considerable escalation in accessibility and readiness of a firearm when the firearm is carried by the officer in holster, or in the hand. The gradations between an unloaded firearm locked in a secure container in a Police car and a firearm, loaded and at the waist or in the hand of an officer facing an offender are several. I do not believe the Police General Instruction as it is currently written sufficiently acknowledges these gradations. It certainly does not describe them.

Apart from the consequences arising out of the foregoing views I have expressed, I think Officer A. conducted himself with decorum and as a responsible Police officer. He dealt fairly with Mr Murray from the beginning of the exchange to point of the struggle by the shed. He had ample cause to suspect Mr Murray was unfit to drive a motor vehicle because of excess consumption of alcohol and that was established by a subsequent blood analysis. He responsibly proceeded to enforce the law of the country in this area and but for the failure of his vehicle there might not have been trouble. That does not excuse Mr Murray's wrongful behaviour in attempting to escape (his own media release fairly recognises that) and Officer A. no doubt thought it his duty to apprehend him. From the time the struggle by the shed began the focus of the analysis shifts to self defence and that has been dealt with by Mr Davison's opinion. I do not recommend any disciplinary action against Officer A.

Recommendations

This is the most perplexing part of this report but I am led to the conclusion that some changes must be made by Police operations and to General Instructions on Firearms to take account of these issues.

1. Apart from the actual shooting incident I am of the opinion greater supervision and support should be available to young and inexperienced constables working in relatively small population centres and which are also somewhat isolated. Officer A. had been cast into the very demanding task of frontline Police duty with insufficient supervision, training and support but particularly in regard when to use firearms.
2. I knowingly will not express my concern about General Instructions on Firearms in too precise a form but I think for an officer about to draw a firearm in an occasional way such as the facts of this case demonstrate there should be built into the Instructions a formula for officers to test themselves whether they are absolutely satisfied of the need for the

carriage on the person of a sidearm. The carriage of weapons in the car is a somewhat different issue. The foregoing should apply to all officers regardless of experience. In respect of inexperienced officers some other formula should be devised that requires them to establish contact with a senior officer to put the case to him or her before drawing a gun to be worn as a sidearm. The very act of mobilising points to speak to a senior should help an officer to crystallise thoughts. This is particularly necessary for remote areas.

These two recommendations will need to be examined by those with extensive operational experience and knowledge.

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
31 May 1995

**Report of the Police Complaints Authority
following the Shooting of Keina Ronald Murray
by a Police Officer at Kaitaia on 17 September 1994**