

Sergeant behaved inappropriately and indecently assaulted woman during car journey

Outline of Events

1. In March 2018, Ms Z, a Ministry of Justice employee, attended a noho marae in Turangi as part of her work duties.¹ Judges attended from throughout the country. Officer A, a sergeant who taught at the Royal New Zealand Police College, had been recommended by Police to attend as a Police representative. Officer A and Ms Z had not met before the event.
2. On the last night of the noho marae Officer A and Ms Z discovered they lived near each other and decided Ms Z would travel back to Wellington in Officer A's car as it would be convenient.
3. Ms Z said during the journey Officer A told her personal intimate details and inappropriate stories that had sexual themes and were demeaning towards women.
4. She said Officer A also told her a recruit at the Police College had come to him concerned that he had breached Police values by having an intimate recording of his girlfriend on his work phone (which had since been deleted). Ms Z said Officer A told her he viewed the recording on the recruit's personal phone and later pointed the young woman out to colleagues at the recruit's graduation.
5. Ms Z also told the Authority and Police that during the journey Officer A "*burrowed his hand down by my seatbelt clip, so essentially under my bottom*" and nudged her in a way that his arm brushed against her right breast several times.

¹ A noho marae is a sleepover at a marae where participants are immersed in an experience where they can learn about Māori culture and protocols.

6. Ms Z said Officer A made her feel extremely uncomfortable throughout the journey, to the point of panicking, as she became concerned about his intentions. Ms X said she was unsure what to do, so she remained polite and friendly. She did not feel in a position to forcefully tell him to stop behaving like he was, as he was driving, they were alone on the remote Desert Road, and her mobile phone was in the boot.
7. Officer A and Ms Z stopped at a service station in Waiouru and saw a Judge who had been at the noho marae with them. He came over and spoke to them. Ms Z said she considered asking him to take her home from there but *“couldn’t imagine how to make that fuss”*.
8. In her complaint, Ms Z said she felt confused, as she had spent the last four days watching Officer A being a key part in the proceedings at the noho marae where everyone seemed to like and respect him. She said her experience of Officer A was very different from other people’s apparent experience of him.
9. In her complaint to the Authority, Ms Z said she wondered:

“How can someone at the heart of the police college—who is responsible for training our officers—have such a demeaning, sexualised and immature view of women...?”
10. The Authority advised Police of Ms Z’s complaint. Police conducted a criminal investigation into the matter, which included interviews with Ms Z and other witnesses. The investigation concluded that there was insufficient evidence to criminally charge Mr X. Police also conducted an employment investigation which resulted in a disciplinary outcome.
11. After this matter was concluded, a Police recruit made a complaint alleging Officer A indecently assaulted her. Officer A has since resigned from the Police.

The Authority’s Investigation

12. The Authority met with Ms Z, and interviewed Officers A, B and C. It reviewed all Police documentation and statements relating to the incident (including the two statements made to Police by Ms Z).
13. The Authority identified and considered the following issues:
 - 1) Did Officer A use demeaning and sexualised language and tell inappropriate stories to Ms Z?
 - 2) Did Officer A touch Ms Z inappropriately?
 - 3) Did Officer A respond appropriately to a recruit who had an intimate recording of his girlfriend on his mobile phone?

14. In her complaint, Ms Z expressed concern that Officer A may speak to others in the same way as he spoke to her, in his role at the Police College. Consequently, the Authority also considered:
- 4) Does Officer A use demeaning and sexualised language when delivering training to recruits at the Royal New Zealand Police College?

The Authority's Findings

ISSUE 1: DID OFFICER A USE DemeanING AND SEXUALISED LANGUAGE AND TELL INAPPROPRIATE STORIES TO MS Z?

15. In her complaint, Ms Z recounted stories Officer A told her and said she felt unable to turn the conversation away from sexual themes as, when she tried, Officer A “*just brought another one up*”.

Intimate details and personal stories

16. Ms Z said within minutes of leaving the marae, and at various times throughout the journey, Officer A told her intimate, sexualised, and otherwise inappropriate details about his own relationships. Officer A recalled telling her personal stories and said Ms Z also shared personal information with him early in the journey. Ms Z denies doing this at the start of the journey.
17. Ms Z said she explained her personal situation to Officer A near the end of their journey because he was about to meet her family. She has since shared this personal information with Police and the Authority for the purposes of the investigations.
18. The Authority generally accepts Ms Z's version of events, on the balance of probabilities. It accepts her account that Officer A began telling her intimate information at the start of the journey, and that she only shared her personal details before he met her family at the end of the trip. Although there were some truths in what Officer A recalled, his version of what she said has been embellished.

Foreign Legion stories

19. Ms Z said Officer A told her the following three stories which Officer B, who had also been at the noho marae, had supposedly previously told Officer A about his time in the French Foreign Legion:

Story 1 - Refugee raped at border

20. Ms Z said Officer A told a story about a refugee woman who had arrived at a checkpoint and been raped by the border guards. He said: ‘*They had her on her back and five, 10, 15 men all went through her*’. Ms Z recalled Officer A told her:

“The woman was allowed through the checkpoint and was raped again at the next checkpoint. Again, the men ‘went through her’. Then there was a third checkpoint where she was raped again. Finally, she arrived at [Officer B’s] checkpoint and he gave her a lift in his car to the refugee camp.”

21. Officer A agreed he had told Ms Z this story and told Police the purpose was to reassure her about how much the New Zealand Police organisation had changed and how you can have a person like Officer B *“work in a place like that and still retain the integrity and mana of a female.”* He told the Police he did not remember using language like *‘the men or guards went right through her’*. He initially told the Authority he thought he did use the phrase *‘the guards went through her’* when telling this story but on reflection said he could not remember exactly and was unsure if he would have *“said that in that manner”*.
22. In his statement, Officer B said he had never told a story about a woman being raped while he was in the Foreign Legion. He was once near a refugee camp when a young girl, who was on her own, suddenly turned up out of nowhere. The soldiers took care of her and handed her over to the people running the refugee camp. As far as he is aware, the woman had not been raped. Officer B said that is the only story he can think of that Officer A might have been referring to, but did not recall ever telling it to Officer A.

Story 2 – Pleasure houses

23. Ms Z said Officer A told her about ‘pleasure houses’ the Foreign Legion sets up:

“... ‘They employ the most beautiful women in the world and they’re really clean, no gonorrhoea or anything.’ [Officer A] used similar language about how many men would ‘go through’ the women in a day. They could have up to 20 men ‘going through them’.”

24. Officer A accepted he had told Ms Z the second story. He told Police he used the second story in the context of how the pleasure houses helped create *“zero percent... domestic violence in the Legion”* and that Ms Z had interpreted it incorrectly. He did not accept he had used language like *‘men going through them’* when telling this story.
25. In his statement, Officer B told Police he had talked to a group of Police about the history of the Foreign Legion and that they used to have pleasure houses which were managed by medical staff who ensured the women were clean and free of sexually transmitted diseases. He said he had never talked about the number of people who would use the women each day, and that parts of Officer A’s story were correct, but not all of it.

Story 3 – Officer pretending to be a doctor

26. Ms Z said Officer A also told her this story:

“One day, a new contingent of sex workers had been bussed into the camp. They had to have a medical check so were sent to a medical tent for this. [Officer B] walked past the tent and saw one of his officers dressed up in a white coat with

a stethoscope giving them internal examinations... 'He had the stethoscope and was checking all the women's v-jay-jays'... The punchline to the story was that [Officer B] said to the man, 'What are you doing?' and the man said, 'The real doctor isn't here for another hour so I'm having a go! They don't know I'm not a doctor.' “

27. In her complaint, Ms Z said Officer A found this story hilarious: *“He was slapping the steering wheel and wiping tears out of his eyes... I was alone in a car with a policeman who thought sexual violation of women was funny.”*
28. Officer A's memory was vague about this story. He told Police that Officer B had told him a story about doctors examining women to ensure they were clean. He said he may have told Ms Z the story, embellishing it to make her laugh, and it would have been about making sure women were clean and in the context of zero tolerance for domestic violence. Officer A later told the Authority he could not recall Officer B telling him anything about doctors in the Foreign Legion and could not remember saying anything like that to Ms Z. Officer A said he does not normally use words like 'v-jay-jay'.
29. Officer B told Police he had never heard of or told this story to anyone, and it was *“completely fictitious”*. He also said it would never happen in the Foreign Legion, and that brothels within the camps were not in existence during his time in the Foreign Legion.

Foreign Legion stories overall

30. Officer A has known Officer B since 2012. After hearing the stories that Officer A allegedly told Ms Z, Officer B said they were *“totally exaggerated”*:

“Over the time that I have known [Officer A] he has asked me a number of times about my time in the Foreign Legion. I am pretty guarded about what I tell people and I have no doubt I have told him snippets...”

31. When the Authority told Officer A that Officer B said he had never told any stories about rape or sexualised behaviour, or girls' vaginas, Officer A accepted that *“maybe it's an embellishment”* but that it was *“probably more along my interpretation of the stories.”*
32. The Authority asked Officer A if he believed telling the Foreign Legion stories was appropriate. He accepted that it was inappropriate, saying he may have got *“a bit carried away”* and *“off track”*, but also said he believed Ms Z had *“got the wrong end of the stick”*. He said to the Authority: *“...yeah most of those things might have happened but some of that stuff there she has absolutely blatantly lied or absolutely misinterpreted it to be quite honest...”*
33. The Authority accepts Officer B did not tell sexualised stories to Officer A, and accepts the evidence of Ms Z. It is satisfied that Officer A did tell these three stories to Ms Z, as some of what Ms Z recalled Officer A saying is factually correct and could only be known to her if Officer A had told her. Officer B said he does not generally speak about his time in the Foreign Legion, so the stories are not widely known.

34. Officer A said he told the stories because he thought Ms Z would be a good fit to join the Police, and so he *“went into... recruitment mode straight away”*. He wanted her to realise the Police valued diversity and it would be a safe place for her to work. He said he used the stories to explain, for example, how the Foreign Legion had no domestic violence, relating it to *“our goals”* regarding reducing domestic violence.
35. Ms Z told Police they did not discuss her joining the Police at any stage and that she has never had an interest in joining the Police. She said Officer A asked her to join his Kapa Haka group when she expressed an interest in learning Kapa Haka.
36. Ms Z also said she did not recall discussing domestic violence at all with Officer A during the trip and that he *“certainly didn’t make any reference to domestic violence when telling the stories about the Foreign Legion.”*

Story 4 - Recruit’s intimate recording

37. In her Police statement, Ms Z said Officer A told her a male recruit had come to him to say he had not lived up to the Police Values, as he had an intimate video recording of his girlfriend on his personal phone and shared it to his work phone. Officer A told the recruit to give him his personal phone and viewed the recording.
38. Officer A agrees that this incident occurred and that he told Ms Z about it. (This report deals later with the appropriateness of Officer A’s response to the matter, as opposed to the language.)
39. Ms Z said Officer A told her he thought the girl was beautiful and described her physical attributes and movements in the video. He talked about her in a sexualised way, using inappropriate language.
40. Officer A told Police that Ms Z’s account was *“an absolute lie”*. He denied using the specific sexualised and inappropriate words recounted by Ms Z. However, the Authority notes that without prompting, he used those same specific words in a Police interview.

Stories overall

41. Officer A told the Authority he remembered thinking he should stop telling the stories: *“But no, I just carried on, got carried away with the stories and didn’t listen to my blimmin inner-self.”* He conceded he maybe did not use *“such a wise choice of conversation or words at the time.”*
42. Officer A also told the Authority his normal use of language is very professional but when speaking to Ms Z that day, he used language that is abnormal for him. He accepted his language was inappropriate that day but when pressed for specific examples, could not provide any.
43. The Authority finds, on the balance of probability, that Officer A embellished the stories he had been told by Officer B, using demeaning and sexually explicit language.

44. Officer A's reasons for telling the stories lack credibility. The Authority accepts Ms Z has never expressed any interest in becoming a Police officer and the stories are unrelated to NZ Police or society generally. For reasons covered later in the report, the Authority is also satisfied that Officer A has a tendency to use inappropriate language in a professional environment.
45. By doing this, Officer A breached the New Zealand Police Code of Conduct which says Police employees must act professionally and exercise good judgement.² Officer A also did not live up to Police Values which say Police employees must act with integrity and be respectful.

FINDINGS ON ISSUE 1

Officer A told Ms Z inappropriate stories.

Officer A used demeaning and sexualised language during the car journey.

ISSUE 2: DID OFFICER A TOUCH MS Z INAPPROPRIATELY?

46. Ms Z told Police they had only just pulled onto the highway at the start of their journey when Officer A put his arm around the back of her headrest, and he kept it there for a large part of the journey up until they reached Waiouru. Sometimes he was so close that if she turned her head around her face would have bumped into his bicep. Ms Z said his close proximity made her feel uncomfortable and crowded. Officer A denied doing this.
47. Officer B told Police he has been in Officer A's truck and recalls seeing Officer A holding onto the metal bars connecting the headrest to the seat. In a police car, where the headrest sits lower, Officer A would hold onto the closest side of the passenger headrest when driving.
48. Officer A told the Authority he does not put his arm on the headrest when driving "*but everybody else, well [Officer B], says I do I don't know, maybe*". This suggests he may lack insight into some of his personal behaviours, and that his recall of his actions during the journey could be unreliable.

Touching Ms Z's breast

49. Ms Z said that, while Officer A told stories, he did a nudge-like movement when emphasising a point, brushing his forearm against her upper arm in a way that also brushed her right breast. She estimates he did this at least 12 times and believes "*there was no way he would not have realised he was also brushing my breast*".
50. Officer A told the Police he may have nudged Ms Z, but he had no intention of rubbing against her breasts. He said if he did do it, he was oblivious to it. Officer A told the Authority it is normal for him to nudge people.

² See paragraphs 87 to 91 for relevant information about Police Values and the NZ Police Code of Conduct.

51. In his written statement, Officer B confirmed that Officer A nudges people when he tells stories, to emphasise points: *“This is exactly what he does. It is really annoying how he does this and I have previously told him not to do it when he has done it to me.”*
52. Ms Y, who also attended the noho marae and knows Officer A well in a professional capacity, agreed he is quite affectionate. She gave the example that he sometimes puts his arm around her when they’re interacting, and said:

“I would not describe this touching as inappropriate, but probably more of an intimate nature than a professional nature... If you talk about crossing a line, Officer A would not cross the line with his intimacy, but he would certainly be very close to it”.

53. The Authority believes Officer A did nudge Ms Z a number of times resulting in his arm brushing against Ms Z’s breast. Given the context in which this occurred, the Authority accepts on balance, Ms Z’s account that Officer A was aware he was brushing against her breast. The act was repeated a number of times and therefore deliberate.

Hand touching Ms Z’s bottom

54. Ms Z said early in the journey Officer A reached over the centre console and burrowed his hand down by her seatbelt clip, sliding his hand, so it was partly under her bottom. In her Police statement, Ms Z said she believes his hand was palm down on the seat and his knuckles were touching her bottom for about three or four seconds. He did not say anything while doing it, and there was no indication that it was accidental.³

55. Officer A adamantly denies touching Ms Z’s bottom, telling Police it was *“rubbish”*. He told the Police officer who interviewed him: *“...I tell you right now mate, I never touched her arse and never touched her tits....”*

56. Officer A told the Authority:

“I’m a very touchy feely person, I give people hugs and kisses ... they said I touched her buttocks and her titties twelve times, that didn’t happen. I’ve said inappropriate things, but that [saying I touched her] was really naughty.”

57. Although the Authority has been unable to identify the exact configuration of the car, it accepts Ms Z’s account and therefore finds on balance that the placing of his hand under Ms Z’s bottom can only have been a deliberate act on Officer A’s part.

Overall

58. Officer A, while travelling alone with Ms Z in a car, knowingly:

³ At the time Officer A was relieving in a different role at a different location and could not recall where he obtained the fleet vehicle from. Due to a change in the fleet management system, police were unable to identify the vehicle used so the Authority could not see the configuration of the console and seatbelt.

- placed himself in close proximity to her by resting his arm on her headrest;
- moved his hand under her bottom;
- nudged her breast about 12 times;
- told Ms Z intimate details about his marriage; and
- embellished stories in a way that increased the sexual content.

59. On the balance of probability, some of these actions constituted indecent assaults.⁴ Additionally, the Police Code of Conduct says: “*Our purpose is to ensure all people in New Zealand are safe and feel safe.*” It also says Police do not tolerate offensive behaviour. Officer A’s behaviour was not in line with the Police Code of Conduct and he did not uphold the Police Values of Professionalism, Respect and Integrity.

FINDING ON ISSUE 2

On the balance of probabilities, Officer A did brush his forearm against Ms Z’s breast several times and touch her bottom.

ISSUE 3: DID OFFICER A RESPOND APPROPRIATELY TO A RECRUIT WHO HAD AN INTIMATE RECORDING OF HIS GIRLFRIEND ON HIS MOBILE PHONE?

60. Officer A told Police the recruit said his girlfriend had sent him the intimate video on his private phone. The recruit had copied it onto his Police phone, but then deleted it from there. Officer A said that he had looked at the recording on the recruit’s personal phone but could see the recruit was embarrassed, so he stopped watching it. He said he told the recruit what he did in his private life was up to him, but he could not have a video like that on his Police phone.

Officer A’s reason for viewing the video recording

61. Officer A told Police and the Authority the reason he watched the video on the recruit’s personal phone was to see if it was an intimate visual recording because he wanted to know if an offence had been committed. Officer A said he considered the recruit may have committed an offence which he could “*get two years for*”, and if he had, it would become a criminal matter.

62. According to the Crimes Act 1961, an ‘intimate visual recording’ is one taken without the subject’s knowledge or consent.⁵ Officer A said the recruit’s partner had sent him the video of herself, so she had clearly given consent and it was therefore not an ‘intimate visual recording’.

63. Officer D, a sergeant and practice leader at the Police College at the time, told the Authority he recalled Officer A telling him an unnamed recruit had spoken to him in confidence about receiving a video recording of his girlfriend, which he had forwarded to his Police phone. Officer

⁴ See paragraphs 82 to **Error! Reference source not found.** for relevant law on indecent assault.

⁵ See paragraphs 84 to 86 for relevant law regarding intimate visual recordings.

A told him he had viewed it and would handle the situation. Officer A asked him about the legislation around intimate visual recordings, and Officer D emailed him the relevant legislation. (The Authority has viewed this email.) Officer A did not discuss the matter with him again. Officer D recalled later receiving an email or text from Officer A to say the matter had been dealt with, though he could not locate this for the Authority.

64. Officer A should not have viewed the video recording as it was a consented private video, sent by the recruit's partner to his personal phone. It was no longer on his work phone and Officer A viewed the recording on the recruit's private phone. The information Officer A had was not sufficient to form a reasonable suspicion that the recruit had committed a criminal offence. However, the Authority accepts Officer A lacked knowledge of any of the offences relating to intimate visual recordings and genuinely believed the video recording could be an offence, as evident by the fact he sought advice regarding the relevant legislation.

Telling colleagues about the video

65. Officer A told the Authority he took a statement, wrote a report about it, and then sent it off to Officer D, but he has been unable to provide a copy of the statement taken. Although he said he could not remember which colleagues he told, he believes Officers C and D were the only ones (Officer C was his supervisor and Officer D worked at the college as a trainer). Officer A said:

"Of course, I must have hit the delete button or something because no-one's received it. I've pulled my computer apart to try and find that. I could easily have said, 'No, it didn't happen', but it happened. I've got no qualms about that."

66. Officer C recalled Officer A telling him a recruit had shown him a recording of a sexual nature on his device, but it was his understanding that Officer A had escalated it to the head of the college, so he had nothing more to do with it. He remembered Officer A telling him quite a few people knew about the recording.
67. Officer A could not recall the name of the recruit and Officers C and D were also unaware of which recruit was involved, so the Authority was unable to speak to him.
68. The Authority accepts Officer A had legitimate reasons for telling Officers C and D about the recording. There is no evidence that Officer A told any other colleagues about the video.

Graduation Day

69. Ms Z said Officer A told her a few months later that on graduation day he had walked past the young woman from the video. He told Ms Z:

"So I raced upstairs and I said to them [meaning some colleagues], 'You'll never guess who's here' and they said 'who?' and I said 'That girl that I told you about from the video' and we all raced down to look at her."

70. Officer A agreed he recognised the girl on graduation day but said he did not tell his colleagues to come and look at the girl, and he did not tell Ms Z that he had.
71. The Authority believes Officer A told Ms Z he did this. Officer A's office was on the ground floor of one of the buildings at the college, while his supervisor's office was on the first floor in a different part of the college. Ms Z would only have known Officer A had seen the girl at graduation and that his colleagues worked upstairs from him if he had told her this.
72. Officers C and D told the Authority Officer A did not tell them the girl in the video was there on graduation day, and there is no evidence that Officer A told other colleagues.
73. Based on the accounts of Officers C and D, the Authority accepts Officer A most likely did not get colleagues to come and look at the girl, but that he embellished the story by telling Ms Z that he did so.

FINDING ON ISSUE 3

Officer A should not have viewed the video recording on the recruit's personal phone.

It was appropriate for Officer A to seek advice regarding legislation and to report it to his supervisor.

Officer A most likely did not encourage colleagues to come and look at the girl in the video on graduation day. It was inappropriate for Officer A to tell Ms Z he did this, and by doing so, he potentially could have brought the Police into disrepute.

ISSUE 4: DOES OFFICER A USE DemeanING AND SEXUALISED LANGUAGE WHEN DELIVERING TRAINING TO RECRUITS AT THE ROYAL NEW ZEALAND POLICE COLLEGE?

74. Officer A said to Police he was interested in recruiting Ms Z so he told her the "*cold hard facts of policing*". He said:

"I told her the real blunt realities of what it's like but I appealed to her sense of diversity really... I share these stories so people can learn and don't make the same mistakes I did in my care... everything I said in there is what I tell recruits. There is nothing there that is untoward as far as I'm concerned how she might have interpreted is her opinions...."

75. When the Authority asked whether he had told those stories to other recruits, Officer A said he had probably not told those ones, and that it depends on what the lesson is.
76. Officer C, who was a manager at the Police College, told the Authority there had been a number of times when he had spoken to Officer A about the appropriateness of his language in the workplace as Officer A used words that were "*quite explicit*" and unprofessional. He recalled

Officer A would use the “C” word or sometimes the “F” word during training situations and said: *“I think it’s just his nature, that’s the way he communicates.”*⁶

77. Officer A told the Authority he tells recruits to tell him if he says anything inappropriate, and he self-corrects when they point out his use of words such as ‘shit’ and ‘bloody’. Officer A’s use of language has not been raised by recruits in the sample of evaluations reviewed by the Authority.
78. The role of the Royal New Zealand Police College is to equip Police staff with the skills needed to contribute to the Police vision, mission and objectives. It would be inappropriate to have someone use demeaning or sexualised language within a training environment and would conflict with Police Values and the Code of Conduct. Officer A shows a lack of personal awareness in having to rely on others to tell him when his language is inappropriate.
79. The Authority has found that, despite Officer A’s tendency to swear, the Authority has not seen any evidence that he uses demeaning or sexualised language when teaching recruits.
80. Officer A told the Authority:

“...when you look at my behaviour on this occasion, I don’t think those recruits would be very happy with me, ‘cause they’d probably say ‘That’s not you, Sarge’... for whatever reason, it happened that time

...

You see I don’t like hurting people... but if [Ms Z] was genuinely hurt then I apologise deeply for that ‘cos I don’t hurt people....”

FINDING ON ISSUE 4

There is no evidence that Officer A uses demeaning or sexualised language when delivering training to recruits.

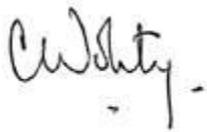
Officer A uses inappropriate language and needs to self-monitor, rather than rely on others to tell him when he is doing so.

⁶ Officer C told the Authority the matter came to his attention as a result of feedback from recruits, so the Authority has checked evaluations for the period where Officer C was Officer A’s supervisor.

Conclusions

81. The Authority found that:

- 1) Officer A told Ms Z inappropriate stories;
- 2) Officer A used demeaning and sexualised language during the car journey;
- 3) On the balance of probabilities, Officer A did brush his forearm against Ms Z's breast several times and touch her bottom.
- 4) Officer A should not have viewed the video recording on the recruit's personal phone;
- 5) It was appropriate for Officer A to seek advice regarding legislation and to report what had happened to his superior;
- 6) Officer A most likely did not encourage colleagues to come and look at the girl in the video on graduation day. It was inappropriate for Officer A to tell Ms Z he did this, and by doing so, he potentially could have brought the Police into disrepute;
- 7) There is no evidence that Officer A uses demeaning or sexualised language when delivering training to recruits; and
- 8) Officer A uses inappropriate language and needs to self-monitor, rather than rely on others to tell him when he is doing so.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

30 April 2020

IPCA: 18-0227

Appendix – Laws and Policies

CRIMES ACT 1961

Indecent assault

82. Section 135 of the Crimes Act 1961 states:

“Everyone is liable to imprisonment for a term not exceeding 7 years who indecently assaults another person.”

83. There is no fixed definition of indecency. For indecent assault to be proven, a judge or jury must collectively consider whether the alleged act was something that the community would generally regard as indecent.

Intimate visual recording

84. In summary, section 216G provides that an intimate visual recording is a visual recording, such as a photograph, videotape or digital image, that is made without the knowledge or consent of the person who is the subject of the recording. The recording is of a person who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and it shows private parts of the body or them engaged in intimate sexual activity or activities such as showering or toileting that involve dressing or undressing.

85. Section 216H says someone may be imprisoned for up to three years if they intentionally or recklessly make an intimate visual recording of another person.

86. Section 216I says someone may be imprisoned for up to three years if they have an intimate visual recording in their possession *“for the purpose of publishing, exporting or selling the intimate visual recording ... knowing it to be an intimate visual recording or being reckless as to whether it is an intimate visual recording”*. Someone may be imprisoned for up to one year if they are in possession of an intimate visual recording without a reasonable excuse, knowing it to be an intimate visual recording.

POLICE VALUES

87. Police’s core Values are set out in a document called “Our Values”. The values are described as follows:

- *“Professionalism: We take pride in representing Police and making a difference with the communities we serve. Looking and behaving professionally, in combination with expertise, is essential to ensuring colleagues and communities feel safe and are safe. In short, we want to “look the part and be the part”.*

- *Respect: We treat everyone with dignity, uphold their individual rights and honour their freedoms. We treat others as they would want to be treated. Being respectful of colleagues and the communities we work with builds trust and confidence in the organisation.*
- *Integrity: We are honest and uphold excellent ethical standards. Our integrity as individuals, and as an organisation, is critical to building the trust and confidence of our colleagues and the communities we serve.*
- *Commitment to Māori and the Treaty: We act in good faith of, and respect, the principles of Te Tiriti o Waitangi – partnership, protection, and participation. Working with Māori is essential to success.*
- *Empathy: We seek understanding of and consider the experience and perspective of those we serve. It's about walking in other people's shoes. Better results will be achieved when we appreciate situations from the point of view of all those we serve and work alongside.*
- *Valuing Diversity: We recognise the value different perspectives and experiences bring to making us better at what we do. Reflecting the communities we serve and appreciating different thinking will lead to better problem solving and better results."*

NEW ZEALAND POLICE CODE OF CONDUCT

88. The Police Code of Conduct asks officers to *"consciously exhibit behaviour which is aligned to Our Values."* The Code applies to everyone working for Police and continues to apply outside of working hours, *"...where our actions may bring Police into disrepute or may damage trust and confidence Police as our employer has in us."* Employees are asked to apply common sense, to act with self-respect and to consider the reputation of Police in their decision-making, saying: *"We act professionally, exercise good judgement and are accountable for our behaviour."*
89. The Code of Conduct, and other related Police policies, refer to "the SELF test." 'SELF' is an acronym, a reminder to help officers to assess whether their actions would:
- *"stand up to Scrutiny and be seen as appropriate by others (e.g. from the media);*
 - *Ensure compliance (e.g. with policy);*
 - *be Lawful (laws, regulations and rules); and*
 - *be Fair (e.g. to community, colleagues, your family and others)."*
90. The Code of Conduct makes repeated references to appropriate behaviour, including:
- *"... never entering into a sexual or intimate relationship with someone we have met in a professional capacity if an imbalance of power exists, or if that person is vulnerable."*

...

- *“we treat all people respectfully, with empathy and dignity. We do so whether they are members of the public, colleagues, victims or offenders and regardless of the circumstances.”*

91. The Code of Conduct states that if a person breaches the Code, *“we will talk with you and determine the circumstances and actions that have led to the situation.”* It then refers to the Police disciplinary policy. It is clear that disciplinary action could include termination of employment, depending on the seriousness of the situation. Examples of misconduct and serious misconduct are provided. Examples of serious misconduct include harassment, sexual misconduct and theft.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
