



POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Complaint by Mr John Slavich into the
Circumstances of Discharge of Jason Irwin from
the Charge of Murder of Steven Slavich**



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REPORT ON COMPLAINT BY MR JOHN SLAVICH INTO CIRCUMSTANCES OF DISCHARGE OF JASON IRWIN FROM CHARGE OF MURDER OF STEVEN SLAVICH

INTRODUCTION

On 26 February 1991 two 15 year old youths, Shane Rogers and Jason Irwin, persuaded Mr Steven Slavich to drive them in his car to Paeroa from where their own car had run out of petrol. In the course of that drive Mr Slavich was shot twice and, with his arm caught in the seat belt, was dragged alongside the car for a considerable distance as it was driven off. As a result both youths were charged with murder.

Rogers pleaded guilty and was convicted and sentenced to life imprisonment. Irwin pleaded not guilty and, following a preliminary hearing in the District Court, was committed for trial in the High Court. At the commencement of the trial the question of the admissibility of the evidence proposed to be given by Detective Constable Macky of an interview he conducted with Irwin and of the oral statement made by him was argued as a preliminary matter. The result was that the trial Judge ruled the statement to be inadmissible.

COMPLAINT

On 4 December 1991 Mr John Slavich, a brother of the deceased, wrote to the Commissioner of Police. That letter was expressed in the form of a series of requests for information, but those requests necessarily involved complaints against the Police and others. To the extent that they were complaints against Police the Commissioner took the view that the matter had become of such public interest that it would be better for Mr Slavich's complaints to be dealt with by someone independent

of the Police. Accordingly, in terms of s.22(2) of the Police Complaints Authority Act 1988, he requested me to conduct the necessary investigation. I agreed to do so and, on 5 December 1991, notified the Commissioner and Mr Slavich accordingly.

I set out Mr Slavich's letter to the extent that it identifies the specific matters of concern which he has raised:

"I make the following requests:

1. Under the Official Information Act. An entire copy of the Police file on this matter to be forwarded to me, as agent on behalf of the family.
2. An urgent enquiry as to why a crown prosecutor was employed in this case when he made a statement to me that he was "not familiar with the provisions of the Children and Young Persons and their Families Act 1989".

This statement was made to me in the Crown Prosecutor's office at the Hamilton High Court at approximately 9.30am on the 3 December 1991. This statement being made following my discussions with him about my concerns regarding the lack of arguments given against the defence claims of non compliance to s.215 of the Children and Young Persons and their Families Act 1989.

3. Why my family was not advised of the difficulties the prosecution had with its case until the last minutes, ie. at 10.00am on 2 December 1991, the date of the hearing.
4. An immediate enquiry into the handling of this case. In particular, if the detective constable who interviewed the suspect, Irwin, had sufficient training as to the interview procedures under the Children and Young Persons and their Families Act 1989, and should further training be given to police to cover this point.

Could I have an explanation as to what were the procedural difficulties confronting the detective constable as to the interview of the suspect, Irwin, and as to the reasons why there was non compliance with the particular act.

5. The reason why the co-accused who had already been convicted and jailed for murder was not called as part of the prosecution argument, given that the defendant's statement was to be challenged as no admissible evidence. This evidence being the prosecution's critical evidence.
6. Please elaborate on the public statement made by the Police on national news Television One at 6.30pm on 3 December 1991 as to why the police do not intend to appeal.

7. A list of other charges to be laid or could be laid against Mr Irwin, ie. robbery as mentioned in the police interview referred to above.
8. An explanation as to why no charges were laid against Messrs Rogers and Irwin after the apprehension by the police in October 1990. And the reasons why the traffic department were not approached to make appropriate charges pertaining to them.
9. An explanation as to why no fire arms charges have been brought against Mr Rogers (senior) following the October 1990 incident or the current case.

In the police interview on National News referred to in point six the officer concerned made a public apology through the media to our family. No contact whatsoever was made to our family directly by any representative of the police or the minister. We believe that this is not the correct procedure in the circumstances. We consider that this case has been totally mishandled from the point of initial interview to the apparent public apology and it leaves us no option but to request that the matter be placed before the independent Police Complaints Authority. If any such enquiry is to inhibit responses to my points one to nine I reserve the right to withdraw the complaints to the Police Authority until a later date."

The investigation of these complaints has taken the form of an examination of the Police files and personal interviews with those members of Police most concerned with the subject of the complaint.

JURISDICTION

Having regard to the wide range of queries raised by Mr Slavich it is necessary for me to make clear the limits of my jurisdiction.

Section 12(1) of the Police Complaints Authority Act empowers me to receive complaints:

- (a) Alleging any misconduct or neglect of duty by any member of the Police, or
- (b) Concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity.

There are certain other incidental powers which have no bearing on the present matter.

Having regard to the specific matters raised by Mr Slavich it must be observed:

1. Several of them expressly fall outside the limits of my jurisdiction. I will indicate which these are as I deal with the individual paragraphs of the letter of complaint.
2. The limits of my jurisdiction as to the practice, policy and procedure of the Police preclude me from making any general comment on the relevant legislation, and in particular on the Children and Young Persons and their Families Act 1989.

BACKGROUND

It is necessary as a preliminary to set out in brief the facts leading to the arrest of the two youths.

Rogers and Irwin were close friends. In September 1990 they had run away from their homes together and, using Rogers' Austin Maxi car, had gone to the West Coast of the South Island where they were apprehended by the Police, who arranged for the father of one of them to collect them and take them home. Although they were unlawfully in possession of some firearms, apparently no other offences were committed by either on this occasion and the incident calls for no further comment at this stage.

In February 1991 they decided to go on a similar escapade, but on this occasion Rogers took a number of firearms belonging to his father. These included a Luger 9mm pistol. They went in Rogers' car but this was old and in poor condition and their intention was to acquire a better car. For this purpose they discussed using the firearms they had in order to persuade the owner of a car to hand it over.

The Austin Maxi ran out of petrol about 3km south of Paeroa. Eventually Mr Slavich stopped to help and, when it was found that the car could not be started, he agreed to give the youths a ride into Paeroa. Irwin sat in the front passenger's seat, and Rogers in the back. After they had travelled about

half a kilometre Rogers told Mr Slavich to pull in to the side of the road. Mr Slavich slowed down and then saw that Rogers had produced the Luger pistol. Rogers then fired a shot which appears to have lodged in Mr Slavich's left arm. Mr Slavich started to get out of the car and Rogers fired another shot which penetrated Mr Slavich's brain. He apparently fell or was pushed from the car, but his left arm was caught in the seat belt and so he remained attached to the car.

It was at about this stage that Irwin left the car by the front passenger door. Rogers evidently climbed over into the driver's seat and drove off, dragging Mr Slavich. It is unnecessary to recount what then happened from Rogers' point of view except that he eventually managed to free Mr Slavich's body from the car and drove off.

Irwin had been left behind on the road and he went into the adjacent paddock where, shortly after, he was seen by a local resident, Mr Gillespie, who was rabbit hunting and for that purpose had a .22 rifle. Irwin, in response to questions, said his mate had shot someone because he wanted his car. Mr Gillespie took Irwin to the road. Irwin said he wanted to go to the Police Station to give himself up, but a constable arrived at that moment and Irwin was handed over to him.

It is what then followed which is the subject of the present investigation.

I deal now with the several matters raised in the letter of complaint.

INDIVIDUAL COMPLAINTS

1. Official Information Act

This Act has no application to the Authority. The request for a copy of the Police file was addressed to the Commissioner and he has responded to that directly to Mr Slavich.

2. Employment of Crown Prosecutor

This is a matter outside the jurisdiction both of the Police and of the Authority. Once the Crown Prosecutor has been instructed, and this is a matter of normal course in a homicide or other serious prosecution, it is a matter for the Crown Prosecutor as to which counsel is assigned to the case.

3. Family Not Advised of Difficulties

Section 6 of the Victims of Offences Act 1987 provides:

"6. Information about proceedings - The prosecuting authority or officers of the court, as the case may require, should make available to a victim information about the progress of the investigation of the offence, the charges laid or the reasons for not laying charges, the role of the victim as a witness in the prosecution of the offence, the date and place of the hearing of the proceedings, and the outcome of the proceedings, including any proceedings on appeal."

The expression "victim" extends, in the case of death, to include the members of the immediate family of the deceased.

Section 6 does not have an unlimited application and does not in its terms expressly apply to information as to the likely outcome of a prosecution. I do not doubt, however, that there was an obligation to inform the members of Mr Steven Slavich's immediate family if it could be seen that there was or may be a fatal defect in the prosecution case. The responsibility was that of "the prosecuting authority" which, by then, may literally have been the Crown Prosecutor, but the practice has been that this responsibility is discharged by the Police. I have no criticism of that practice.

The officer in charge of the case, Detective Sergeant Knight, first became aware that there was to be a challenge to the admissibility of Irwin's statement on the afternoon of Friday 29 November. He did not want to cause Mrs Slavich, the deceased's widow, any earlier distress than could be helped so delayed telling her until the morning of the trial. I consider he is not to be criticised for this.

4. The Handling of the Case

This aspect of the complaint is directly mainly to the lack of compliance with the requirements of the Children Young Persons and their Families Act (to which I refer as "the Act"). In particular attention is drawn to the training in the requirements of the Act of the member of Police who interviewed Irwin, and the reasons for non-compliance. I now turn my attention to those matters.

I have interviewed the members of Police who were most closely concerned with the apprehension of Irwin. These were Detective Constable Macky, Sergeant Shields, Detective Sergeant Knight and Detective Inspector Denby.

I have set out above the narrative of events, but I must now expand on that to the extent that it affected Irwin.

As soon as Irwin realised that Mr Slavich had been shot he left the car and, when it drove away, he took to the nearby paddock. He was seen by Mr Gillespie to be hiding, but he then told Mr Gillespie that his mate had shot someone. He also said that he was heading for the Police Station to give himself up. Mr Gillespie took him to the road and handed him over to members of Police who were there. These included Sergeant Shields.

Sgt Shields asked Irwin what had happened and was told "We shot him". It was immediately apparent to Sgt Shields that the matter was of the utmost gravity. He was also able to see at once that Irwin was a youth who appeared to

be under 17 years of age. His first concern, however, was to find out what had happened to the other youth, particularly as he knew from Irwin that the other youth was armed and had gone off in the car. He accordingly handed Irwin over to Det. Const. Macky who had by then arrived, and from then on until Irwin was arrested some five hours later he was in Det. Const. Macky's charge.

Apart from the brief comments made by Irwin at this stage no attempt was made to interview him until their arrival at Paeroa Police Station. As Mr Justice Fisher has noted, the first obligation in terms of the Act was to tell Irwin that he was not obliged to accompany Det. Const. Macky. This was not done.

Upon arrival at the Police Station Det. Const. Macky commenced his interview of Irwin, all of which he recorded at the time in his notebook. I have inspected the notebook, and find that it is the handwritten account of what was later offered in evidence in typed form.

The interview started with Det. Const. Macky giving Irwin the normal adult caution, namely, "You are not obliged to say anything. Anything you do say may be given in evidence." He then embarked on a series of questions designed to ascertain the circumstances of the shooting. Irwin talked freely in response to the questions and, as the Judge has observed, in the course of the first 20 minutes he made some critical admissions.

After about 20 minutes there was a break in the interview during which Det. Const. Macky spoke to a Senior Constable, and also to Det. Inspector Denby who was in overall charge of the operation and who had just arrived at the Paeroa Police Station. There seems little doubt that it was at this stage that the need for compliance with the Act was first brought squarely to Det. Const. Macky's attention. He has acknowledged that he was aware from the outset that he was dealing with a young person to whom the Act applied and that he knew there was a required

procedure under that Act but he has given an explanation (to which I will refer shortly) as to why he did not follow that procedure. Once there had been a discussion with Det. Inspector Denby the Detective Constable set out to repair his omission.

He explained to Irwin his right to have someone present at the interview. Irwin did not request anyone in particular. He was then asked if a representative of the local Social Welfare Department would be sufficient and he agreed to that. Det. Const. Macky then sent for a Social Worker, Mr Radford, who came to the Police Station and was present throughout the rest of the interview. However, by then, as the Judge has noted, the damage was done. There had been an almost complete failure to observe the requirements of section 215 of the Act.

The Police have readily acknowledged that this failure occurred, that it ought not to have occurred, and that the result was fatal to the Crown case against Irwin because there was virtually no evidence of an offence against him apart from his own statement.

My investigation, therefore, could be concerned not with whether the Police were at fault, but only with how that had occurred and whether there should now be any disciplinary action as a result.

As he is fully aware, the person upon whom the spotlight must mainly be focused is Det. Const. Macky. Before I embark on that, however, it is of considerable importance to note what Det. Const. Macky's obligation was in order to ensure compliance with the Act. I cannot demonstrate this better than by setting out the checklist supplied to members of Police in order to guide them in their compliance with the Act. The checklist is contained on a printed form and it occupies the whole of one side of that form and about two-thirds of the back of the form. This is as follows:

YOUTH JUSTICE CHECKLIST — STEPS FOR INVESTIGATION

Name of Child/
Young Person: DOB

Address:

Parent/Guardian/Care Giver:

Address:

Date: Time: Location:

(N.B. CIRCUMSTANCES WILL DICTATE SEQUENCE TO FOLLOW)

A. BEFORE QUESTIONING, EXPLAIN (in manner and language appropriate to age and understanding of CYP)

- | | | |
|---|-----|----|
| 1. (If sufficient to arrest) THAT may be arrested if refuse name and address; and | YES | NO |
| 2. THAT not obliged to accompany, and if consent, may withdraw consent anytime; and | YES | NO |
| 3. THAT not obliged to make statement; and | YES | NO |
| 4. THAT if consent to make statement, may withdraw consent anytime; | YES | NO |
| 5. THAT statement may be used in evidence; and | YES | NO |
| 6. THAT entitled to consult with lawyer and any person nominated by CYP in accordance with Act. | YES | NO |

N.B.: — 1 and 2 not apply if CYP under arrest.

B. WARNING

- | | | |
|--|-----|----|
| 1. Has a warning been considered? | YES | NO |
| 2. Have sufficient particulars been recorded for YAS to notify parents etc.? | YES | NO |

C. WHEN MADE UP MIND TO CHARGE, OR CYP ARRESTED EXPLAIN

1 to 6 in (A)

N.B.: — 1 and 2 not apply if CYP under arrest.

NOTE: not apply if explanations have already been given within previous 1 hour.

D. ARREST

If satisfied on reasonable grounds, that arrest necessary

- | | | |
|---|-----|----|
| 1. To ensure appearance before Court; or | YES | NO |
| 2. Prevent CYP committing further offences; or | YES | NO |
| 3. Prevent loss/destruction of evidence; or | YES | NO |
| 4. Prevent interference with witnesses; and summons not achieve 1-4, then may arrest | YES | NO |
| 5. 1-4 not prevent arrest where reasonable cause to suspect a purely indictable offence; AND believe on reasonable grounds that arrest required in public interest. | YES | NO |
| 6. Notification to Police Commissioner *YOUTH | YES | NO |

E. NOTIFICATION TO PARENTS OR OTHERS

- | | | |
|---|-----|----|
| 1. CYP at Police Station for questioning/ after arrest | YES | NO |
| Time Arrival Hours | | |
| 2. As soon as practicable after arrival inform person nominated by CYP | | |
| Time Informed Hours | YES | NO |
| 3. That CYP at Station and may be visited at Station | YES | NO |
| 4. Where nominee, not Parent/Guardian/Carer or CYP fails/refuses to nominate, inform Parent/Guardian/Care giver, unless impracticable | YES | NO |
| If impracticable, why? | | |
| | | |
| | | |

[Persons who can be nominated:

- (i) Parent or Guardian
- (ii) Adult member of Family/Family Group
- (iii) Any other adult CYP selects, if CYP fails or refuses;
- (iv) Then any adult nominated by Police (but not enforcement officer)]

| | | |
|--|-----|----|
| 5. When nominee/s arrive explain 3-6 (A) to them | YES | NO |
|--|-----|----|

F. ENTITLEMENT TO CONSULT LAWYER

- | | | |
|---|-----|----|
| 1. CYP at Police Station for questioning/after arrest | YES | NO |
| Time Arrival Hours | | |
| 2. As soon as practical after arrival inform CYP entitlement to consult with lawyer | YES | NO |
| Time Informed Hours | | |

G. STATEMENT ADMISSIBILITY

Any statement, oral or written inadmissible UNLESS

- | | | |
|---|-----|----|
| 1. Explanations 1-6 in (A) explained in appropriate language/manner. | YES | NO |
| N.B.: — 1 and 2 not apply if already arrested or in custody. | | |
| 2. CYP want to consult with lawyer and/or other person before making statement. | YES | NO |
| 3. Has CYP consulted with such person/s | YES | NO |
| Time Hours | | |
| 4. Statement made in presence of: | | |
| (a) Barrister/Solicitor; | YES | NO |
| (b) CYP Nominee; or | YES | NO |
| — where CYP fails, refuses to nominate, statement made in presence of: | | |
| (c) Parent/Guardian | YES | NO |
| (d) Adult Member of Family/Family Group | YES | NO |
| (e) Any other Adult (not enforcement officer) | YES | NO |

Persons CYP could nominate:

- (i) Parent or Guardian;
- (ii) Adult Member of Family, Whanau Family Group;
- (iii) Any other Adult.

| | | |
|--|-----|----|
| 5. Statement made spontaneously and before reasonable opportunity to comply with 1-4 | YES | NO |
|--|-----|----|

I should say at once that I can find no fault with the form itself. The requirements of the Act are lengthy and complex (notwithstanding that they may be clearly expressed) and a checklist of such length was necessary for frontline Police to have ready access to a reminder of their obligations. It would be altogether unrealistic to expect members of Police to have all the necessary procedures fixed in their minds at all times. This must apply particularly, of course, to those who rarely come in contact with young offenders. Having said that, it must be noted that Det. Const. Macky did not have the checklist in his possession and was only marginally aware of its provisions. He had received information of the coming into force of the Act, and had received a booklet which set out the provisions of the Act. He had attended a training session with regard to the requirements of the Act but had little familiarity with it.

While acknowledging that he knew there were certain obligations on him in respect of interviewing a person under 17 years of age, Det. Const. Macky gave me his explanation for failing to comply with those obligations. In essence this was the same explanation that he gave when giving evidence before the Judge in the absence of the jury.

He explained his failure to tell Irwin that he was not obliged to accompany the Police, and that, if he did go with the Police, he could later change his mind, on the basis that Irwin had said he wanted to go to the Police Station. Det. Const. Macky thought that Irwin's desire to go voluntarily to the Police relieved him of the need to give a warning that there was no obligation to accompany the Police. I respectfully agree with the Judge that this explanation was not a sufficient reason for not complying with the Act, but in the particular circumstances (to which I will refer shortly) I think it was an understandable failure.

The Det. Constable then explained that, once at the Police Station, notwithstanding his knowledge of the existence of the provisions of the Act, his failure to comply with them was due mainly to his preoccupation with the need to find out what had happened, and particularly with the need (as he put it) "to get what details I could from Mr Irwin in relation to the offence as it related to his co-offender and any possible movements of his co-offender who was armed and dangerous." Again, this could not be accepted as a reason for not complying with the express provisions of the Act but it is not difficult to understand the reactions of a policeman in those circumstances.

As I have indicated, it is undoubted that there was a failure to comply with the Act. This has been set out in detail, by Mr Justice Fisher and, in the result, I respectfully agree that he was left with no alternative than to hold that the statement taken from Irwin was inadmissible.

Having reached this point I must consider whether I ought to recommend to the Commissioner that there should be any disciplinary action against any member of Police. Upon a careful examination of the whole of the circumstances I am satisfied that there should be no such recommendation, and I set out now my reasons for arriving at that conclusion:

- (a) As I have said previously, it is no part of my jurisdiction to consider or comment in a general way upon the Act. So long as it remains in force it is the obligation of the Police to observe and comply with its terms.

My jurisdiction does, however, permit me to comment on the requirements of the Act as they affect the person making the complaint in a personal capacity. I take this to mean that I may pay regard to the requirements of the Act as they applied to the particular circumstances of this case.

Looked at in this way one is immediately confronted with the task which this particular member of Police (Det. Const. Macky) was expected to perform in the circumstances which existed. Det. Const. Macky is a member of the CIB stationed at Waihi. I am aware from my review of many complaint files over the period of nearly three years that the Authority has been in existence that there are many, and increasing, numbers of young persons who are not only criminally minded, but who are fully alive to the rights granted them under the Act and who know how to escape the consequences of their conduct by relying upon those rights. The sense of frustration which has been expressed by members of Police over this is not hard to understand. The result of all this is that an instinctive desire to bring a criminal to justice may weigh more heavily than an appreciation of the need to follow a statutory requirement precisely. I do not condone that but I recognise that it may occur.

Those members of Police who are having to deal with young offenders on a daily basis (as for instance in a city the size of Auckland) should be expected to have a regular working familiarity with their obligations under the Act and, however much they may disapprove of them, to comply with them.

I do not consider the same thing must necessarily be said of Det. Const. Macky. I note the observation of Mr Justice Fisher, *"In the present case I find it surprising and regrettable that over a year after the Act came into force, and after the publicity given to decisions such as Fitzgerald, the officer concerned should have fallen so far short of the requirements of the Act, in so many respects, in a manner which was so patently serious."* I must, and of course do, defer to His Honour's decision, but there is some difficulty in applying that comment to Det. Const. Macky.

He was not one of those with a regular familiarity with the apprehension of young offenders. I am informed that in Waihi, where he is stationed, there are few young offenders and the Det. Const. told me that it is very rarely he has had to deal with juveniles. His work is almost solely confined to adult offenders. It is not easy to apply to him the expectation of compliance with the requirements of the Act that one might have of, for instance, a member of Police in a city area.

It is also necessary to bear in mind the circumstances in which Det. Const. Macky came to have charge of Irwin. He was called away from rugby practice at about 7.30pm. He was first told there had been a shooting, and then that it seemed more likely to have been a hit and run accident. He did not have a copy of the checklist and realised he was dealing with a young person only when Irwin was handed over to him. Theoretically, of course, he should have been able to adapt his handling of the case to the situation as he found it, but, through no fault of his own, he was faced with a task in which he had little experience.

- (b) There was nobody immediately available to supervise the Detective Constable. Unlike a Police Station in a reasonably populous area, there was no supervising NCO on duty at the Paeroa Police Station at that time. If there had been one might have expected that such a person would have been able to ensure that all procedures were correctly carried out. This incident occurred in a Police District in which there are only two commissioned officers. In the circumstances which existed there was little prospect of any effective supervision of Det. Const. Macky and he had to do the best he could.
- (c) In view of what happened in this case, and in the light of the dramatic consequences of the failure to comply with the Act, attention has been focused mainly on those consequences rather than on how they arose.

Mr Justice Fisher has set out with considerable clarity the requirements of the Act and the reasons why a failure to comply with them had to result in the exclusion of the whole of the statement. I have little doubt that virtually every member of Police in the country is now fully alive, not only to the need to comply meticulously with the Act, but also to the significant consequences which will follow a failure to do so. Certainly Det. Const. Macky left me in no doubt of his present understanding of the position.

It must be observed, however, that when Det. Const. Macky was called out on the evening of 26 February 1991 and confronted with an apparent crime of horrifying proportions, the nature and extent of his obligations and the consequences of not complying with them were by no means so clear cut.

In order to try and put this aspect of the matter in perspective I have discussed it with the Crown Prosecutor. He had been required to decide what charges should be laid against the two youths and finally decided that each should be charged with a single count of murder. He was aware that, so far as Irwin was concerned, the statement taken by Det. Const. Macky must necessarily comprise the bulk of the Crown case. He had recognised the possibility of a difficulty in having that statement admitted, and accordingly, on 18 October 1991, he enquired of defence counsel whether there was any intention of challenging the statement. He was informed there was not. It therefore came as something of a surprise to him to receive a telephone call from defence counsel on Tuesday 26 November informing him that the statement was after all to be challenged. He accordingly made an application to the Court under s.344A of the Crimes Act 1961 for the determination as a preliminary matter of the admissibility of the statement. It was the decision upon that application which led to the charge against Irwin being dismissed.

I offer no criticism of the course which either counsel followed in this case. That would be a matter outside my jurisdiction. I consider it is necessary, however, to pay regard to the clear inference which must be drawn.

Notwithstanding the clarity of the Judge's reasoning it ought not, in my opinion, to be assumed that the failure to comply with the requirements of the Act should have led automatically to a realisation that the statement would be inadmissible. Certainly, it cannot have been regarded in that way by counsel on either side. If it had, then it seems inconceivable that defence counsel would have permitted the statement to go unchallenged at depositions. It would only have been necessary to indicate the intention to challenge it to have secured an order prohibiting publication of its contents, but this was not done. The possibility that the statement was vulnerable was plainly realised at a late stage. If it was not obvious to counsel from the outset then it is very difficult to say that the consequences of this failure ought to have been evident to Det. Const. Macky at the time.

- (d) Before leaving this aspect of the investigation I think I should say something about the decision to prefer a charge of murder against Irwin. This was entirely the prerogative of the Crown Prosecutor and, having regard to a number of decisions of the Court of Appeal, there can be no criticism of the decision which was made.

I am, however, concerned at some public comments which have been made to the effect that a young murderer has been allowed to walk free upon a technicality. I consider such comments to be irresponsible and unfair. There is no means of knowing what would have been the outcome if the statement had been admitted and the case had gone to trial. I am bound to observe, however, that it is far from a foregone conclusion that there

would have been a conviction for either murder or manslaughter. In my respectful opinion, the difficulties for the Crown in achieving either verdict were formidable.

I offer this comment only in the hope that it may help to place Irwin's position in a better perspective than it has been.

In the result, I conclude that, while Det. Const. Macky failed altogether to discharge his obligations under the Act, this failure must be seen in its correct light, and ought not to involve any disciplinary action against him.

5. The Omission to Call the Co-accused as a Witness

This is a matter solely within the province of the Crown Prosecutor and is beyond my jurisdiction and that of the Police. However, I should observe, having examined the whole file, that there was little prospect of the Crown case being rescued by calling Rogers as a witness. Irwin was charged with being a party, rather than a principal, to murder. Because of the legal principles which this involved, and which relate very largely to Irwin's knowledge and state of mind, it seems unlikely that Rogers could have given a great deal in the way of relevant evidence.

6. The Intention not to Appeal

This also is a matter outside my jurisdiction. The question of an appeal in such a case is always decided on the advice of the Crown Prosecutor or the Solicitor-General. It is not, therefore, a Police matter.

For what it may be worth I offer the comment that I have read with great care the judgment of Mr Justice Fisher and am entirely confident that any appeal from it would fail.

7. Other Charges Against Irwin

The question of what charges should be preferred against an accused person who has been committed for trial is one for decision by the Crown Prosecutor and not the Police, although on occasions there is consultation between them.

It may well be the case that there could have been other charges preferred against Irwin, as, for instance, the unlawful possession of firearms. Where, however, there is such a grave charge as murder it is unusual to consider adding minor charges. I should add that the limitation period for laying summary charges against Irwin has now long since expired.

Initially Irwin was charged with aggravated robbery. That charge was not included in the indictment. This was the decision of the Crown Prosecutor and, while again it is not within my jurisdiction, I have no doubt that his decision was correct.

The crime of robbery involves the commission of theft in particular circumstances. Theft is the taking of something with the intention of depriving the owner permanently of it. The evidence in this case strongly suggests that it was never the intention of Rogers and Irwin to take Mr Slavich's car for any more than the temporary use of it. It is very hard to see how a charge of aggravated robbery could ever have succeeded.

8 & 9 The 1990 Incident

I have not attempted to conduct an investigation into this incident. There is a brief reference to it on the Police file, but it was apparently treated at the time as a case akin to youthful truancy. When the youths were apprehended in Greymouth the Police insisted on one of the parents going to collect them, and that was a responsible course.

The youths had with them a slug pistol and a .22 rifle and ammunition. These were returned to Mr Rogers by the Police when he called to collect the boys.

Apart from the fact of possession of the firearms there is no indication of either youth having committed any offence in the course of this escapade. The action of the Police in handing them over to a parent and returning the firearms to him appears to me to be reasonable in the circumstances. Mr Rogers is a recognised firearms collector and had a current firearms licence. He believed that he had then secured his firearms in such a way that his son could not get access to them. Unhappily this turned out not to be correct.

I can see no evidence of any offence in respect of firearms having been committed by Mr Rogers.

SUMMARY

While Mr John Slavich has expressed great concern over all aspects of this case I have had to confine my investigation to those matters which properly fall within my jurisdiction.

The conclusion I have reached is that the Police, in the person of Det. Const. Macky, undoubtedly failed to comply with the provisions of s.215 of the Children Young Persons and their Families Act 1989.

By reason, however, of the complexities of that Act, the nature of his training in its application, and his lack of experience in dealing with young offenders, there is no basis for recommending any disciplinary action against him.

There is little doubt that the amount of training given to Det. Const. Macky in the requirements of the Act was inadequate to equip him for the situation which arose. It

follows that I must recommend that the question of training members of Police for this purpose ought to receive consideration. I can take this aspect of the matter no further because training and administration are outside my jurisdiction and because I am unaware what administrative steps would be necessary to comply effectively with my recommendation.



Sir Peter Quilliam

POLICE COMPLAINTS AUTHORITY

14 January 1992