

TE RUNANGA O NGAI TAMARAWAHO

THE TAURANGA TOWN HALL SITE

On 25 July 1989 this Authority received from the Ombudsman two letters dated 6 and 23 July 1989 that Mr Hugh Sayers of Tauranga had sent to it on behalf of the Ngai Tamarawaho tribal members he claimed to represent. These letters were acknowledged on 1 August 1989 and confirmed that this Authority would undertake the enquiries requested. This report is the result of the exhaustive investigation that has now been completed.

SOURCE OF COMPLAINTS

On 21 April 1987 Mr Sayers, as spokesman for Ngati Ranginui, formally notified the Tauranga City Council that the City's Town Hall site was included in that Tribe's claim to the Waitangi Tribunal dated 20 October 1986. He requested that the proposed demolition of the Town Hall and the redevelopment of the site be deferred pending the findings and recommendations of the Waitangi Tribunal. In the event that the City Council was not prepared to await that Tribunal's decision he gave notice that - "Should you decide to proceed with any proposals for the Town Hall site we will instruct our lawyers to issue proceedings immediately in the High Court".

Again on 4 June 1987 Mr Sayers gave formal notice to the City Council that he intended to apply to the High Court for an injunction to prevent the Council proceeding with the Town Hall demolition and redevelopment work. However on the following day it was reported that Maori leaders in Tauranga were objecting to Mr Sayers' proposed court action; that Mr Sayers and his supporters had no authority to take such Court action; that the matter had not been discussed with the Maori elders primarily concerned; and that the elders were embarrassed by these events which they said were only going to disturb the good relations which had existed with the Council in the past.

On 7 July 1987 the City Council called tenders for the demolition of the Town Hall and Mr Sayers gave further notice to the Council that High Court writs were being prepared.

A newspaper report on 25 August 1987 again referred to the pending High Court proceedings to stop any demolition of the Town Hall planned by the Council.

On 14 September 1987 members of the Ngai Tamarawaho occupied the Town Hall. Mr Bickers, the Chief Executive of the City Council, notified the Police who attended meetings and conferences that day and the following day to try and resolve the confrontation. These efforts were unsuccessful and on 16 September those protestors who had refused to leave the Town Hall were arrested.

On 22 September 1987 Mr Sayers filed proceedings against the Tauranga City Council in the High Court but these were abandoned on 8 October 1987.

DISTRICT COURT TRIAL

The District Court trial was heard on 12 and 27 November and continued on 21 and 22 December, and concluded on 23 December 1987. A written decision was delivered by Judge Wilson on 24 December 1987. This decision ordered -

"That each defendant come up for sentence if called upon within 9 months conditional on the defendant entering into a Bond for \$500 with the Registrar for a term of 9 months the terms of such Bond being that they will not enter upon any part of that land which was the site of the Town Hall - the full legal description of which will be included as part of the Bond - under the provisions of Section 188 of the Summary Proceedings Act 1957. Under the provisions of Section 189 of that Act if any Defendant should refuse to enter into such Bond the term of imprisonment shall be fixed at 42 days. The Defendants will remain in custody until those Bonds are signed."

Ancillary to that decision, and as a result of incidents arising in the course of the proceedings, each of the Defendants were further charged with contempt of Court; were convicted; and each fined \$500.

From this decision each of the Defendants appealed to the High Court.

HIGH COURT APPEAL

The appeal to the High Court was heard from 19 to 23 June 1989. Mr Justice Anderson delivered his judgment on 28 June 1989. On the trespass charges each appellant was discharged without conviction pursuant to Section 19 of the Criminal Justice Act. On the Contempt of Court charges those convictions remained but the whole of the penalty imposed was remitted in each case.

COMPLAINTS

Mr Sayers' correspondence indicates three complaints that he requires this Authority to investigate.

1. The actions of the Tauranga City Council prior to and during the confrontation that led to the arrests on 16 September 1987. No doubt this issue is raised as a result of several references to the Council throughout the course of Mr Justice Anderson's judgement, e.g.

"As will be seen from other matters mentioned in this judgment, it is unfortunate indeed that the Tauranga City Council preferred to involve the arm of the Law before it sought the authority of the Law. By which I mean to indicate that there was no reason apparent to me from a consideration time after time of the voluminous notes of evidence, why the City Council could not have resorted to an urgent application for an injunction ex parte which might well have been recognised by the appellants and would have been ignored by them at their peril for they would have been in contempt of the High Court."

Now this Authority has no jurisdiction to investigate any complaints against or involving the Tauranga City Council in this dispute. While it is true I have interviewed both Mr Pope and Mr Bickers (the Mayor and Chief Executive of the Tauranga City Council respectively) it would be quite inappropriate for me to consider this particular complaint which has been levelled at the Council by Mr Sayers. Not only would it be inappropriate, but this Authority has no jurisdiction to undertake an enquiry involving actions taken or not taken by a local authority.

For those reasons that complaint is not investigated.

2. The second complaint was included incidentally in Mr Sayers' letter to this Authority dated 23 July 1989. That letter set out in detail the basis of his main complaint (referred to in 3 hereunder) but included the following two paragraphs :

"Now my reason for writing is that last Friday I was told in confidence by a person with very close Police connections that there was a strong "anti" feeling towards me in particular for pursuing the appeals and the resulting outcome and that I have been spoken about in very disparaging and threatening terms.

Although my conscience is clear and I am not worried about talk behind my back, I am conveying this to you firstly for the record should anything happen in future, and secondly because it may in fact be necessary, given the sensitivity and highly emotional nature of this particular matter, as well as the wider inter-racial contentions, for some pre-emptive caution or counselling to prevent any needless side issues or incidents arising."

I have accepted Mr Sayers' statement that this is not really in the nature of a complaint but rather a matter he wants recorded "should anything happen in the future". Further he suggests that counselling may be appropriate. Accordingly I have forwarded a copy of Mr Sayer's letter to the Commissioner of Police.

3. The third complaint by Mr Sayers is as he concedes the real issue of the enquiry that he has asked this Authority to undertake. He sets this complaint out as follows :

"I seek your investigation and review of this complaint, particularly in the light of the judgment of the High Court in Rotorua. You will note that Mr Justice Anderson quite properly makes no finding on the question of forcible entry under the Crimes Act as these were not the charges on trial before him, neither had the Police the opportunity to defend themselves. However he finds clearly on the facts contained in the Notes of Evidence before the District Court Judge and which were undisputed that Ngai Tamarawaho tribal members were in actual and peaceable occupation of the Town Hall and that no offence had been committed warranting the intervention of the Police.

I trust that you will have due regard to his Honour's judgment and will ensure that those responsible for the unlawful breaking and entry and eviction will be brought to justice even though they may be Police Officers, in the same way that ordinary people would be treated."

In a subsequent letter to the Superintendent of Police in Tauranga dated 27 July 1989, Mr Sayers referred to this particular issue as follows :

"There was undoubtedly a "confrontation" on 16 September 1987. But as his Honour found at Page 23 -

"There was no conflict until the Police at the behest of the Tauranga City Council came with tools and numbers to assist the Tauranga City to implement a decision made in respect of a civil wrong. That was the confrontation, not the act of occupation"

"As you yourself note the crux of this issue is identified by Anderson J. at Page 9 -

"What has been questioned and tested in the course of this appeal is the necessity for them to have performed the functions they were called upon to do.

... again I stress at this stage there is no evidence, certainly none relied on by the Crown, that any criminal offence had occurred."

"This is the guts of my contention and the reason why I have persisted in consistently pursuing this point, despite my earlier complaints being ignored and rejected."

"Essentially then my complaint is that in all fairness those responsible for the "confrontation" and breaches of the peace (forcible entry) should be brought to justice no matter who they are or what their standing or position in the community might be. And I say this in all sincerity and without any malice. It is simply a matter that must be addressed if justice is seen to be done and the law to be administered evenly."

THE COMPLAINT TO BE INVESTIGATED

The fundamental issue raised by Mr Sayers is whether the Police in taking the action to remove the protesters from the Tauranga Town Hall on 16 September 1987 committed an offence against the Crimes Act and in particular Section 91(1) of that act relating to forcible entry. That section states as follows :

"Section 91(1) - Everyone commits forcible entry when, by force or in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace he enters on land that is in the actual and peaceable possession of another for the purpose of taking possession whether or not he is entitled to enter."

Submissions were made by the defendants in the District Court proceedings referring specifically to this Section 91 and the question of its application and implication to those lower Court proceedings. The extract from those submissions to the District Court relied upon by Mr Sayers follows -

"The Law of forcible entry applies even to the man who in fact has the right to enter with neither colour of right nor actual right being a defence. It is also clear that the entry must be for the "purposes of taking possession" and that forcible entry is only permissible in the due execution of lawful process of Court.

The prosecution evidence was that the Police authority to enter the Town Hall and make arrests for trespass derived from a written request for assistance from the Chief Executive Officer of the Tauranga City Council. It is clear that this process was not lawful and that the Council officer and the Police assisting him committed an offence in breach of the peace that all who joined in its commission are liable."

Now in addition, Mr Sayers relies on certain parts of Mr Justice Anderson's decision which he says supports those original submissions just referred to and so validates the basis of his present complaint to this Authority. In particular Mr Sayers relies on the following extracts from the Judgment which he has highlighted and specifically referred to; namely :

"First there was a forcible entry by the Police into a building in actual and peaceable occupation by the trespassers."

"... entry was gained by force and the feeling was manifest amongst the appellants that in their view the actual and peaceable occupation or even the minor criminal offence of trespass was less reprehensible than the measures taken to deal with it."

"There was no conflict until the Police at the behest of the Tauranga City Council came with tools and numbers to assist the Tauranga City to implement a decision made in respect of a civil wrong. That was the confrontation, not the act of occupation."

INVESTIGATION

The Police Complaints Authority has been established by special legislation and became operative on 1 April 1989. It will be immediately apparent that the complaints which have been referred to this Authority arose some 1½ years before the Authority even came into existence. There is provision, however, for the Police Complaints Authority to exercise a discretion in certain circumstances and to consider complaints prior to the date when it came into existence, namely 1 April 1989. I have decided to exercise that discretion in respect of the special circumstances existing in this case. Here there is an allegation that certain Police Officers have committed a crime and have not been prosecuted; and further the Complaint contains racial overtones suggesting that Maori protestors are prosecuted but Police Officers are exempted. Such allegations should, as far as possible, be scrutinised; if well founded then the appropriate Authority should be questioned; if groundless then the complaint should be disallowed and the appropriate authorities advised of that decision.

Having elected to exercise the discretion referred to above, a detailed investigation was undertaken involving all the parties concerned with the occupation of the Tauranga Town Hall. These enquiries and investigations have of necessity taken some time, but have enabled this Authority to undertake a complete and comprehensive review of every aspect of the background leading up to the confrontation on 16 September 1987; the involvement of the parties on that date; and all the evidence on which was based firstly the Judgment of District Court Judge Wilson; and secondly the Judgment of Mr Justice Anderson on appeal in the High Court.

I personally interviewed the following :

1. It was considered appropriate that I should meet Mr Sayers and the people that he represented so that I would then have the opportunity to carefully listen to what they had to say and make a record of any matters which they considered of importance and which were additional to the Notes of Evidence recorded at the District Court; the judgment of District Court Judge Wilson; the detailed submissions which were presented at that District Court hearing; and the judgment on appeal by Mr Justice Anderson. At this meeting of the elders at Tauranga, Mr Sayers set out in detail the historical background to the dispute over the Town Hall site; the negotiations, representations, correspondence etc with the City Council authorities and generally presented all matters relative to the complaint which he required the Authority to investigate. I also had the opportunity at that meeting of hearing from Mr Manu Te Pere (a Ringatu Minister); Mr William Mathews (a retired Mormon Bishop) and his wife Mrs Kay Mathews; Mr Morehu Ngatoko; Mr Riki Rangi and Mr Alex Tata. While Mr Sayers presented comprehensive details of negotiations prior to the Town Hall protest and matters relevant to the subsequent District Court hearing, Mr Alex Tata and the other elders emphasised that while they were prepared to support representations regarding the Town Hall site, they had given very definite instructions that nothing illegal was to be done. These elders expressed their upset and hurt at how this matter had completely got out of hand and had been a most shattering experience for them and their families. I believe that they were genuinely concerned at the events that had taken place, which events were contrary to their expressed intentions of having their objectives presented but not as part of a confrontation exercise.
2. I personally interviewed the following Police Officers, all of whom took some part in the arrests which occurred on 16 September 1987. These were Superintendent Stanhope of Tauranga; Superintendent Hamilton of Rotorua; Inspector Marley of Whakatane; and Senior Sergeant Brand of Tauranga.
3. I personally interviewed Mr Pope, the then Mayor of Tauranga; and Mr Bickers the Chief Executive Officer of that City.
4. I also personally interviewed the Reverend Smart in Wellington and obtained from him a very clear picture of the church service which he conducted prior to any action being taken by the Police.
5. I have perused voluminous newspaper reports comprising some one hundred pages in all of editorials, letters to the editor, and newspaper reports (both prior to and subsequent to 16 September 1987).
6. I have read the claim which has been made to the Waitangi Tribunal, and finally I have carefully considered the three judgments that have been made available to me, one by District Court Judge Wilson and two by Mr Justice Anderson - the first dated 29 September 1987 and the second dated 28 June 1989.

All these interviews I immediately recorded so that I am now able to rely on all this information for the compilation of my report.

REFERENCE TO THE POLICE IN MR JUSTICE ANDERSON'S JUDGMENT

For reasons which I shall set out later in this report, it is inappropriate and quite often wrong to refer to or rely upon sentences of a Judgment in isolation. The dangers of such an approach are obvious, and can, in some cases, be very misleading without referring to the complete paragraph of which the sentence forms part. Only in that way will the context of the Judgment be preserved. While Mr Sayers has in some instances highlighted a single sentence, in others he has referred to only part of a sentence - a course of action that can provide quite misleading inference.

For the purpose of completeness, I refer now to some of those extracts from the Judgment relied upon by Mr Sayers insofar as they refer to the Police, but in the context of the whole paragraph of which they formed a part.

"On 16 September 1987 the Chief Executive Officer of Tauranga City Council, Mr Bickers, sought the assistance of the local police in ejecting persons claimed to be trespassers. For reasons which will appear in the course of this Judgment, that is what they were in law. They were committing the tort, that is the civil wrong, of trespass but there is nothing to suggest that any criminal offence has occurred."

"What happened on the morning of 16 September is that Mr Bickers, along with a senior non-commissioned officer of Police entered the Town Hall site where there was a karakia in progress. There were numerous ministers of religion present at the site at least three of whom were in clerical garb. They included Archdeacon Smart, the senior clerical officer of the Anglican Church. There is evidence that there was a Ringatu minister and there were many denominations represented. It was equally plain that there were elderly persons amongst the gathering. These included kaumatua and kuia of Ngaitamarawaho. It must have been obvious that there were very small children present. There were children being nursed by their mothers. There were young women. It is a feature of the hearing that all police officers were, very fairly, ready to acknowledge that the appellants and all other persons present acted in a peaceable way when the police entered the room in which the karakia was being held. It is, I think, somewhat regrettable that the police, who conducted themselves in my judgment in an exemplary way after certain barricades had been removed, were called upon to enforce civil claims at the behest of the Tauranga City Council.

I mention as an aside that the Courts always recognise the difficulty and stress of the work of the New Zealand Police. Their very difficult task is not ameliorated by having to undertake activities capable, unfairly, of lowering their respect in the eyes of the New Zealand community. This is an occasion where they were called upon to carry out a very difficult duty which could not, of its nature, enhance their mana and which, in my respectful view, they should not have been called upon to do; certainly at that stage of the troubles between Ngaitamarawaho and the citizens of Tauranga."

"It ought be recorded that none of the appellants has criticised the Police in the course of this hearing. They have mentioned the concern they felt when the Police entered the room where the karakia was being

held, carrying in some cases long batons and in other cases wearing riot gear. The appellants have understandably expressed the fear that they felt when they saw these police officers but I do not recall any appellant directing criticism towards the conduct of the Police themselves. What has been questioned and tested in the course of this appeal is the necessity for them to have performed the functions they were called upon to do."

"It serves little purpose to go through the transcript as some appellants have done finding a fault here or a misunderstanding there on matters of little or no relevance. I confine my assessment of matters which derogated from the appearance of justice to just a few and these may be noted as follows. Some are connected with the trial, some form the background to the trial which was capable of affecting private and public perceptions of its course.

First, there was a forcible entry by the police into a building in actual and peaceable occupation by the trespassers. I use the term "forcible entry" in its lay sense and not its legal sense in terms of the Crimes Act. It would be quite unjust for me to express any view that a criminal offence had occurred in relation to forcible entry and I will not do so. But entry was gained by force and the feeling was manifest amongst the appellants that in their view the actual and peaceable occupation or even the minor criminal offence of trespass was less reprehensible than the measures taken to deal with it."

"Second, there is, with respect, no justification for accusing the appellants of generating racial and inter-racial conflict. There was no conflict until the Police at the behest of the Tauranga City Council came with tools and numbers to assist the Tauranga City to implement a decision made in respect of a civil wrong. That was the confrontation, not the act of occupation."

Mr Justice Anderson's judgment confirms that neither the appellants (of whom Mr Sayers was one) nor his Honour in any way criticised the Police. What was questioned was the necessity for the Tauranga City Council to involve the Police in a situation where, as his Honour has confirmed, the appellants were in fact trespassers on City Council land.

It is, of course, no part of this Authority's function to question His Honour's comment as to "... why the City Council could not have resorted to an urgent application for an injunction ex parte ...". In the same way it would be inappropriate to over emphasise the issue of why Mr Sayers did not resort to "an urgent application for an injunction ex parte" when the Council were advised of such a course of action by Mr Sayers on 21 April 1987; 4 June 1987; 7 July 1987; and 25 August 1987 - many months prior to the arrests on 16 September 1987.

In summary therefore, Mr Justice Anderson's judgment provides a very clear statement both of his and the appellants' views of the police involvement on the day of the arrests -

"It ought be recorded that none of the appellants has criticised the Police in the course of this hearing. They have mentioned the concern they felt when the Police entered the room where the karakia was being held, carrying in some cases long batons and in other cases wearing

riot gear. The appellants have understandably expressed the fear that they felt when they saw these police officers but I do not recall any appellant directing criticism towards the conduct of the Police themselves. What has been questioned and tested in the course of this appeal is the necessity for them to have performed the functions they were called upon to do."

THE LEGAL POSITION

I have already said it is inappropriate and quite often wrong to rely upon sentences of a judgment in isolation. Mr Sayers clearly relies upon limited extracts from the judgment of Mr Justice Anderson as the basis firstly of his present complaint and secondly his demand for the Police Officers to be charged with forcible entry under S.91 of the Crimes Act.

The danger of this approach was highlighted in almost exact circumstances in the case of R. v Robinson 1971 1 Q.B. 161 where it was stated :

"It is often the case that a single sentence lifted from the summing up can, in isolation, give a false impression, but it is well established that one must look at the summing up as a whole and, looked at as a whole, we do not think that this misunderstanding could have been engendered in the jury's mind."

The inherent danger of relying on one or two sentences in a judgment and referring to these out of context is highlighted in the present case. In one of Mr Sayers' original letters dated 6 July 1989 he stated as follows :

"I seek your investigation and review of this complaint, particularly in the light of the Judgment of the High Court in Rotorua. You will note that Mr Justice Anderson quite properly makes no finding on the question of **forcible entry** under the Crimes Act, as these were not the charges on trial before him, neither had the Police the opportunity to defend themselves. However he finds clearly on the facts, contained in the Notes of Evidence before the District Court Judge and which were undisputed, that Ngai Tamarawaho tribal members were in actual and peaceable occupation of the Town Hall and that no offence had been committed warranting the intervention of the Police.

I trust that you will have due regard to His Honour's Judgment and will **ensure that those responsible for the unlawful breaking and entry and eviction will be brought to justice** even though they may be Police Officers, in the same way that ordinary people would be treated."

Those parts of these two paragraphs from this letter that I have underlined were highlighted and so relied upon by Mr Sayers, i.e.

"in actual and peaceable occupation"

and

"no offence had been committed".

Based on these limited extracts taken out of context, he claims that the protestors were legally on the Town Hall site; and that because :

"... there was a forcible entry by the Police into a building in actual and peaceable occupation by the trespassers"

therefore the Police, because of this forcible entry, should now be charged under S.91 of the Crimes Act. That and other references in the High Court decision form the basis and rationale of Mr Sayers' complaint.

It is wrong in law, and it cannot be justified either logically or ethically, to refer to one or two sentences in isolation like this; or to imply that a very small part of a very lengthy judgment, taken out of context, is a basis for instituting criminal proceedings, as is now suggested.

SECTION 91(1) OF THE CRIMES ACT

A consideration of Section 91 must of necessity be prefaced by the findings established by the judgments of both District Judge Wilson and Mr Justice Anderson. The latter concluded his judgment as follows :

"Now, each one of these points on its own is scarcely likely to result in a setting aside of conviction for trespass but cumulatively they leave me troubled that justice has not been seen manifestly to be done. I am not troubled to the extent where I will quash the convictions as such because it is plain on the evidence that each defendant was bound to be convicted of trespass, but the scales of justice may be fairly restored to balance by discharging each appellant without conviction on the trespass charges pursuant to S.19 of the Criminal Justice Act."

That finding that each of the appellants "was bound to be convicted of trespass" clearly establishes the position confronting the Police when they were required to remove the trespassers by the Tauranga City Council on 16 September 1987. Further it confirms that in proceeding to arrest those appellants who refused to leave the Town Hall despite repeated requests and warnings, the Police were not in breach of Section 91(1) of the Crimes Act as now claimed by Mr Sayers. The Police were simply carrying out a legal duty which they had a responsibility to perform because as His Honour has found, the appellants were trespassers. Of course it is quite true that Mr Justice Anderson criticised the Tauranga City Council for not instituting civil proceedings for what was a civil wrong. But such criticism is in no way directed at the Police - nor can it be. The Police were requested by the Tauranga City Council to remove people whom Mr Justice Anderson has stated were trespassers. In such circumstances the Police would be failing in their duty and abrogating their responsibility in not issuing the appropriate warnings (which they did) and in not arresting the trespassers who failed to heed those warnings (which they did). Similar circumstances and situations arose during the Springbok Rugby Tour of New Zealand when a number of cases resulting from those disturbances confirmed the liability of trespassers and the responsibility of the Police. I refer to just a few, viz. Venemore & Others v Police (unreported Auckland High Court decision - 19 April 1982); Allen and Others v Police (unreported Wellington High Court decision 14 December 1982); Skold v Police (1982) 1 NZLR 1971 (CA).

CONCLUSION

It must be accepted that the Police have a duty and a responsibility to maintain peace and order in the community.

Mr Justice Anderson has found as a fact that the appellants (including Mr Sayers) were trespassers. This Authority accepts that finding.

The action of the Police at Tauranga on 16 September 1987 in warning the trespassers to leave the Town Hall; and then arresting those trespassers who refused to obey that warning, was both legal and justified in the circumstances. It was clearly necessary to prevent an imminent breach of the peace.

I believe that the Police, on 16 September 1987, were duty bound to warn the protestors and to then remove the trespassers still occupying the Tauranga Town Hall. They have certainly committed no offence in performing this duty.

Finally, I explained initially why I decided to undertake the investigation of a complaint which arose in 1987, well prior to the establishment of this Authority. Apart from that explanation I was also motivated by two other factors - firstly there were disquieting suggestions of racial conflict; and secondly it is the first occasion that this Authority has had to deal with an issue that has as its genesis a Maori Land claim.

Despite a lengthy and exhaustive investigation, as already outlined, I found absolutely no evidence suggesting racial conflict. In fact I found the opposite. Both Mr Pope and Mr Bickers referred to numerous instances and events indicating both sympathy and support for the causes presented by Mr Sayers and those associated with him. They believed, and with justification, that such claims could never be dealt with by the City, but had to be determined before the Waitangi Tribunal. It is before that Tribunal that these claims will be finally decided.

The same considerations were evident from the manner in which the Police carried out their duties prior to and on 16 September 1987 - firstly they attended meetings and made serious attempts at conciliation prior to the arrests being made; secondly they did not take immediate action to remove the protestors in the hope that their attempts at conciliation were successful; and thirdly on the day of the arrests they commenced their duties in the most moderate way possible. On the morning of 16 September 1987 the Police were represented by Sergeant Brand and Constable Anaru Grant (who could speak Maori and so be immediately available to avoid any misunderstanding). It was these two officers only representing the Police who first went into the Town Hall to again attempt conciliation with those occupying that building. What happened subsequently has already been the subject of two judicial hearings - one by a District Court Judge, and another an appeal by a High Court Judge. I have found no evidence whatsoever suggesting or implying any racial conflict on the part of any Police Officers. Nor has Mr Sayers referred me to any specific incident suggesting such racial overtones.

Mr Justice Anderson in his judgment on appeal stated that the Tauranga City Council in asking for Police assistance to remove the protestors had invoked the arm of the law before it sought the authority of the law. He

suggested instead the Council should have sought an injunction against the protestors through the High Court. However as my researches have shown the protestors, too, should or could have taken the same injunction action against the City Council through the High Court. In fact on four separate occasions between 21 April 1987 and 14 September 1987 Mr Sayers publicly stated that High Court proceedings were to be issued. However these were not filed until 22 September 1987, that is after the trespass arrests. These were subsequently abandoned on 8 October 1987.

The High Court action recommended by Mr Justice Anderson applies equally to the Tauranga City Council and as well to the protestors. If both or either had taken the action he had recommended then the confrontation would not have occurred.

However neither the City Council nor the protestors sought the assistance and the protection of the High Court - rather the Council invoked the authority of the Police; and the protestors occupied the Town Hall.

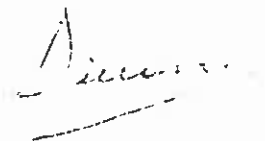
There are two significant findings established by Mr Justice Anderson which assist me in arriving at my final decision, namely :

1. "... it is plain on the evidence that each defendant was bound to be convicted of trespass ..."
2. "It ought be recorded that none of the appellants has criticised the Police in the course of this hearing."

The Police are required at all times to maintain law and order. On this occasion a breach of the peace would clearly have resulted if the waiting contractors had moved onto the Town Hall site. The Police in such circumstances had to remove the trespassers. It was their duty to do so.

I am satisfied that what the Police were required to do and did do on 16 September 1987 does not constitute an offence against Section 91(1) of the Crimes Act 1961.

The complaint by Mr Sayers is not upheld. I shall notify the Commissioner of Police accordingly.



Deputy Police Complaints Authority