

6. Police charged Custody Officer B in relation to his actions. He pleaded guilty and was convicted on two charges of male assaults female.³
7. The release of the Authority report was delayed until Custody Officer B's Court case was completed.

Issues examined by the Authority

8. The Authority conducted an independent investigation which included interviews with Custody Officers A and B, five other custody officers, and one of the supervising sergeants, Officer D. The Authority also reviewed Police statements and transcripts and other relevant Police documentation.

Issue 1: Was Custody Officer B's sexually-related conduct towards colleagues contrary to law and policy?

Issue 2: Was Custody Officer B's other conduct contrary to law and policy?

Issue 3: Did Police appropriately address Custody Officer B's conduct?

The Authority's Findings

9. The Authority found that:
 - Custody Officer B's sexually-related conduct in relation to Custody Officer A was inappropriate, criminal, and breached Police policy and the Code of Conduct;
 - Custody Officer B's sexually-related conduct towards Custody Officers E and J was also inappropriate, potentially criminal, and breached Police policy and the Code of Conduct;
 - it was inappropriate and contrary to law and Police policy for custody officers to record prisoners and share the videos on Snapchat;
 - it was inappropriate for Custody Officer B to use a gang call in his workplace;
 - it was inappropriate and potentially criminal for Custody Officer B to take the speaker from Custody Officer A's home without her knowledge;
 - senior Police appropriately addressed Custody Officer B's conduct as soon as they became aware of it; and
 - there was a concerning culture of acceptance in the workplace by Custody Officer B's colleagues which allowed inappropriate sexual and non-sexual behaviour to continue.

³ See paragraph 72.

We are satisfied that, since Custody Officer B's conduct came to light, Police have been working to improve the culture at the Auckland District Court Custody Unit and that they will continue to do so.

Analysis of the Issues

ISSUE 1: WAS CUSTODY OFFICER B'S SEXUALLY-RELATED CONDUCT TOWARDS COLLEAGUES CONTRARY TO LAW AND POLICY?

10. Custody Officer A worked with Custody Officer B for just over a year at the Auckland District Court Custody Unit. She told Police that Custody Officer B's inappropriate behaviour towards her began after she had been working there for about six months and then continued to escalate in both frequency and degree. She said "*grabbing*" and other less serious behaviour occurred on a daily basis and the more serious behaviour was "*probably a few times every week, of every month*".
11. One colleague, Custody Officer E, told the Authority Custody Officer B was "*very laid back, very jokey and also very inappropriate*", behaving in a sexual manner towards both male and female custody officers.
12. When interviewed by the Authority, some of the custody officers referred to Custody Officers F and G as '*the boys*', saying they were often with Custody Officer B, who was seen to be like a leader. They would ensure they were working together and were generally known as "*the muscle*". Custody Officer G told Police he had never seen any sexual or inappropriate behaviour between Custody Officers A and B.

Sexual behaviour towards Custody Officer A

13. Custody Officer A told the Authority Custody Officer B simulated sex with her on numerous occasions: "*It didn't matter how many times I asked him to stop... it's like he didn't even hear.*" She also told Police: "*I've had instances where I've actually run to get back into my court room, to get away from him and close the door.*"

While having lunch

14. Custody Officer A said she was having lunch with up to six other custody officers when Custody Officer B grabbed her and threw her on a table putting his weight on her so she could not move. Custody Officer A told Police that Custody Officer B said something like: "*I want to put my cock into your pussy... I want you to sit on my face.*"
15. In her Police interview, Custody Officer A said Custody Officer B was holding her so tightly that it felt violent:

"... I'm pinned, I just can't escape. I can't even speak... I've said stop, get off and I've been firm, but on this occasion, there was such a violence to it where he just... squeezed me so tight, I could feel my breath slipping away... I really thought I might pass out if he didn't let me go soon."

16. Custody Officer H, who witnessed the incident, told Police that Custody Officer B gave the impression he thought it was funny, but *“you would think he knew he had crossed the line.”*
17. In his Police interview, Custody Officer B initially said he did not simulate sex with Custody Officer A at all, but later said he wished she had told him she did not like it when he ‘humped’ her. When interviewed by the Authority, he confirmed the lunchtime incident had happened. He did not, however, agree he had pinned Custody Officer A down. He told the Authority the female officers were talking about *“their sexual problems or something”*, then Custody Officer A *“pretty much got on the table”* voluntarily.
18. The Authority believes this incident occurred as Custody Officer A said, and that it was unlawful as it was of such a significant nature that it had a serious detrimental effect on Custody Officer A.⁴

After dancing

19. In his Police statement, Custody Officer I recalled a time when *‘the boys’* were dancing like strippers. He said Custody Officer B picked Custody Officer A up, *“chucked”* her on the table and got on top of her. Custody Officer A was lying on her back with her legs apart and Custody Officer B was between her legs, thrusting for about 30 seconds.
20. It is unclear if this is the same incident as outlined in the section above as Custody Officer B recalled an incident where he was dancing like this but does not believe it involved Custody Officer A being on a table.
21. Officer A recalled Officer B dancing like a stripper but did not directly relate this to a time when he simulated sex with her.
22. The Authority accepts Custody Officer I witnessed an incident where Custody Officer B forcefully simulated sex with Custody Officer A.

In the control room

23. Custody Officer A told the Authority she recalled a time in the control room when Custody Officer B grabbed her and pinned her to a desk for a few minutes. As she fell forward, some blinds separating the control room from the custody area slipped, and a prisoner was able to see what was happening.
24. In her Police statement, Custody Officer H said she saw Custody Officer B push Custody Officer A onto the desk, hold her by the hips and gyrate against her backside. She said Custody Officer A was telling him to stop, saying *“this is not a good look, the prisoners can see”*.
25. Custody Officer B said he did not recall this incident at all however the Authority believes it happened given the accounts of Custody Officers A and H.

⁴ See paragraphs 110 to 119 for relevant law and policy regarding sexual conduct.

Snapchat video from a cell

26. Custody Officer E and Custody Officer I said they received a Snapchat video showing Custody Officer B performing simulated sex on Custody Officer A in an empty cell (the video automatically deleted once viewed). In his Police statement, Custody Officer I said that he was not surprised by the video as Custody Officer B *“did it all the time, to everyone, including guys.”* In her Police interview, Custody Officer E said Custody Officer B was behind Custody Officer A:

“... he had his arms around her, gripping the table, and was humping her from behind, in quite a sexual manner... he looked to be nuzzling her neck. [Custody Officer B] wasn’t looking at the camera and he wasn’t laughing. I could clearly see that [Custody Officer A] was trying to get out of his hold. [Custody Officer A] was pushing [Custody Officer B’s] arms and trying to break the grip he had on the table to free herself. While I was watching the video, I did think [Custody Officer A] looked quite distressed, however I didn’t do or say anything, as I still thought it was a joke. I was concerned that it was filmed, and potentially who else had received the video.”

27. Custody Officer A does not remember this specific incident but believes *“it absolutely would have happened.”*
28. Custody Officer B said he did not recall this incident at all.
29. The Authority accepts that this incident did occur given the accounts of Officers E and I.
30. A person commits an offence if they record someone engaged in sexual activity without their knowledge or consent and if they post a digital communication which *“would cause harm to an ordinary reasonable person in the position of the victim”*.⁵ Police also have policy relating to the use of social media and people’s privacy. It specifically recommends officers not post photos on personal social media accounts of themselves in uniform and that they do not post anything that will negatively impact the reputation of Police. It is unclear who made the recording or distributed it. Snapchatting the video was a breach of law and Police policy.

Pretending to demonstrate a fighting hold

31. Custody Officer E told the Authority Custody Officer B pretended to show a male colleague, Custody Officer J, a type of fighting hold which he turned into simulating sex with him (see paragraph 55). She said a few hours later five or six custody officers were talking about it, laughing and joking, when one suggested Custody Officer B should try it on someone from the front. Custody Officer A was working at a computer and someone suggested she be Custody Officer B’s model, so she stood up and put her arms out:

“He hooked his arms under her armpits and then came around and put his hands over her mouth and repeated the humping and she just sort of stood there and it went on for a lot less time, maybe only 10 seconds or so and everyone laughed and then he let her go and we carried on.”

⁵ See paragraphs 125 to 132 for relevant law and policy relating to the sharing of information and use of social media.

32. Custody Officer A did not specifically recall this incident but said Custody Officer B simulating sex with her was “almost like a constant”.
33. Custody Officer B told the Authority that the fight hold prank was like a viral joke going around. He said ‘the boys’ did it to him then he did it to Custody Officer F, but he denied doing it to Custody Officer A.
34. The Authority believes Custody Officer E’s account of the incident and also accepts that other custody officers most likely did this to their colleagues, believing it to be a joke. However, the Authority does not consider this to be appropriate conduct under any circumstance.

In the control room kitchen

35. Custody Officer A told Police and the Authority that Custody Officer B pulled her into the control room kitchen. He closed the door and turned off the lights, grabbed her, and held her from behind while she wriggled and twisted. She said as he is “really big” and was being rough, she could not get out of his grip: “... he’s close and he’s all over me... there’s no personal space. He’s grabbed me, it’s tight. And I just wanna get him off me.” She told Custody Officer B to get off her, but he would not. She thought, “Oh, my God, we’re in the dark, he could do anything”. She drew her pepper spray and told him she would use it. He laughed, turned the lights back on, and left the room.
36. Custody Officer H told Police and the Authority she saw Custody Officer B force Custody Officer A into the kitchen. She heard a noise which she described to the Authority as being like something knocking over. A minute later, Custody Officer A came out of the kitchen and told her she had almost had to use her pepper spray on Custody Officer B.
37. In his Police interview, Custody Officer B said he did not pull Custody Officer A into the kitchen. However, in his interview with the Authority, he remembered taking her into the kitchen using “kind of like a choke hold...”. He said he was “just mucking around” and did not recall Custody Officer A threatening to use pepper spray on him.
38. The Authority believes this incident did occur in the manner described by Custody Officer A.

Pretending to remove clothing

39. Custody Officer A told the Authority about one of the many times when Custody Officer B pretended to expose himself to her: the lights went off in the locker room and Custody Officer A crouched down on the floor so Custody Officer B could not find her. Custody Officer H witnessed this and said in her Police statement:

“[Custody Officer A] and I had lunch and came into the locker room to sit down... [Custody Officer B] was standing by the door by the hallway. He was posturing, pretending to undo his pants. The lights went out... I told [Custody Officer A] to come over here. It was very dark. I couldn’t see anything. I did this because I know what [Custody Officer B] is like with [Custody Officer A]. I had previously seen [Custody Officer B] behaving sexually towards [Custody Officer A]. The light was out for less than a minute. When the light came back on [Custody Officer B]

was standing there with his belt undone and it looked like he was getting ready to undo his fly."

40. Custody Officer A told Police about another incident when she was in the control room and Custody Officer B said "*disgusting things*" while undoing his work pants. He undid his trousers and pulled them down to his thighs then started to unpeel his underpants: "*... he wasn't tricking. There's a difference. I know the difference. I'm 100% sure. He would've just flopped himself out.*" She said Custody Officer B laughed as she left the room.
41. Custody Officer H said Custody Officer B would look at Custody Officer A suggestively and pretend to undo his pants and that he "*never seemed to care about who was around or who saw.*"
42. Custody Officer B did not specifically recall these two incidents, however, when talking to the Authority he agreed his behaviour generally included pretending to undo his pants.

Touching

43. When Custody Officer A first contacted Officer C to tell him of her allegations, she told him Custody Officer B had grabbed her hand and put it on his crotch. She told the Authority: "*...he tried on many occasions to do that... where he'd just grab my hand and try and place it on his penis...*". Custody Officer A said she is sure some of her colleagues saw this behaviour and that Custody Officer B did not care if his colleagues were looking.
44. A colleague said in a Police statement that Custody Officer B "*continuously*" behaved sexually toward Custody Officer A, always being in her personal space and touching her "*daily or every other day*".
45. Custody Officer B agreed his behaviour included placing Custody Officer A's hand on his crotch and said it was "*the way we were down there...the culture down there*". He did not agree with the assertion that he behaved "*continuously sexually*", but said he did flirt. When asked by the Authority if his behaviour was of a sexual nature, he agreed it was. He also conceded that it was not appropriate behaviour.

Christmas party

46. Custody Officer A hosted a Christmas party at her house for her colleagues on 10 November 2018. She told the Authority she thought Custody Officer B would not do anything inappropriate with a lot of other people at her house.
47. Custody Officer H told the Authority she recalled Custody Officer A saying to her early on during the party: "*You watch me. You help look after me at the party eh? Those boys are cheeky...*". She said she did not consider this indicated Custody Officer A was "*fearing for anything seriously*".

Lap dance

48. Custody Officer B admitted to Police and to the Authority that he subjected Custody Officer A to a lap dance during the party. When asked by the Authority how Custody Officer A reacted, he said: *"Just like she always takes it, I guess...laughing."*
49. Custody Officer A initially disclosed the lap dance to Officer C in November 2018. She could not recall it in her interview with the Authority, however, Custody Officer B and Officer H both did.

Laying on bed

50. Custody Officer A told the Authority that Custody Officer B grabbed her arm. She panicked as he dragged her into the bedroom, so she pulled Custody Officer H in with her. Custody Officer A told him to *"stop"* and to *"get out"*. Once they were on the bed, she was unable to get Custody Officer B to move away as he was on top of her. She told him he was going to spill her coffee, hoping that would distract him. She said the whole incident lasted less than 30 seconds.
51. Custody Officer H recalled being pulled along as Custody Officer A was taken into the bedroom and put on the bed. Custody Officer H said she told Custody Officer B he was a *"bloody idiot"* and to *"stop being a dick"*. She told the Authority she did not think the incident was sexual in nature even though *"what he did... wasn't right"*. She believed Custody Officer B thought Custody Officer A was being *"a real good sort"*.
52. Custody Officer B told the Authority that he and Custody Officer F carried Custody Officer A and pushed her into a bedroom and put her on the bed. He said Custody Officer A was resisting a little, but it was like a joke, with everyone laughing. Custody Officer B told the Authority: *"... I know I was on top and then [Custody Officer F] was on top of me... not like fully on top of her, not squashing her."* He recalled Custody Officer A holding a coffee and telling them she was going to spill it.
53. Neither Custody Officer A or Custody Officer H mentioned Custody Officer F being on top of Custody Officer B, though Custody Officer A said the *"other boys"* were behind him and Custody Officer H told Police she said: *"Get out you bloody idiots"*.
54. The Authority believes Custody Officer B did lay on Custody Officer A against her will.

Sexual behaviour towards other colleagues

Fight hold on Custody Officer J

55. As mentioned in paragraph 31, Custody Officer E told the Authority Custody Officer B bent over Custody Officer J and simulated sex with him for about 20 seconds, as part of the fight hold 'virus'. Custody Officer E said in her Police statement: *"Everyone was laughing and some of the boys were filming it. It was a big joke to everyone except [Custody Officer J] ..."* Custody Officer M also told the Authority he witnessed this incident.
56. Custody Officer J told Police he did not remember the incident and did not want to make a complaint as he did not have a problem with anything Custody Officer B had done.

57. As stated in paragraph 33, Custody Officer B accepted that he performed an action that simulated sex on Custody Officer J.

Custody Officer E

58. Custody Officer E told Police and the Authority she was leaning over a table to write on a whiteboard when Custody Officer B came up behind her, wrapped his arms around her, and simulated sex with her for about 10 seconds. He made moaning noises and was laughing. In her Police statement, Custody Officer E said: *“I let him continue humping me, before saying to him ‘are you finished’ or ‘are you done’ or something along those lines.”* Afterwards she told him that although she tolerated most things from him, this was *“a bit over the line”*. She said he had not done it to her again and she told Police she did not want to make a complaint against Custody Officer B. She believes there were eight or nine colleagues in the room at the time.
59. Custody Officer K told Police he witnessed this incident and recalled it happening as described by Custody Officer E.
60. Custody Officer B did not remember this incident when interviewed by Police, but later accepted that it happened when talking to the Authority. He remembered they were at the whiteboard and Custody Officer E was in front of him. He told the Authority: *“That was just another bad choice... I guess I took that trust too far.”*
61. The Authority considers Custody Officer B to have behaved inappropriately towards Custody Officers E and J, despite the custody officers themselves not wanting to report the incidents.

Officer B ignored pleas to stop

62. Custody Officer A acknowledged to Police that she often did not display emotions that indicated she found Custody Officer B’s behaviour unacceptable: *“I’d probably smile and not wanna make a big deal about it...”* The Authority understands she was under considerable pressure to tolerate his behaviour due to most of their colleagues dismissing it as ‘a joke’. However, Custody Officer A also explained to the Authority there were many times when she told Custody Officer B to stop and there were occasions when she told him to *“f**k off”* and *“piss off”*.
63. Custody Officer B denied Custody Officer A told him to stop. When the Authority suggested he should not have put Custody Officers A and E in the position where they had to tell him to stop, he accepted he should not have. He said: *“... I apologise for that and I take that on the chin.”* He told Police:

“I just wish [Custody Officers A and E] had come up to me or been straight with me from the start on anything I had done... just like... I don’t like it if you hump me... like working down there is depressing... so I ... always try to be like... muck around with people you know... try and make them happy... but I guess that I took that too far....”

64. The Authority accepts Custody Officer A tried to make Custody Officer B stop on many occasions by physically attempting to get away from him and by telling him to stop. Custody Officer A and the other custody officers should not have been placed in the position where they had to tell

Custody Officer B to stop touching them sexually as it was inappropriate for him to be behaving like that towards them in the first place.

Summary

65. The Authority accepts Custody Officer A's accounts and the accounts of other witnesses. It is apparent Custody Officer B repeatedly behaved in the alleged manner towards Custody Officer A in particular, though not exclusively. Custody Officer B told the Authority he simulated sex on Custody Officer A more than anybody else and believes there would have been about seven incidents with her.
66. The Human Rights Act 1993 says it is unlawful to sexually harass another person, repeatedly use unwelcome or offensive sexual language or behaviour, or subject someone to sexual behaviour *"of such a significant nature that it has a detrimental effect on that person"*.
67. Police policy states: *"Any... harassment is unlawful and unacceptable..."*.⁶
68. The Authority considers Custody Officer B sexually harassed Custody Officer A and therefore breached section 62 of the Human Rights Act 1993 and Police policy.
69. The Crimes Act 1961 defines 'sexual activity' as being sexual connection with a person or: *"the doing on the person of an indecent act that, without the person's consent, would be an indecent assault of the person."* The Authority believe Custody Officer B also committed indecent assault.
70. The Police Code of Conduct applies to all Police employees and clearly communicates the expectation that they behave in a manner which upholds the integrity and reputation of Police. Employees are asked to act with self-respect and assess whether their actions would stand up to scrutiny and be seen as appropriate by others.
71. The Code of Conduct also asks employees to *"consciously exhibit behaviour which is aligned to Our Values"*. Police values which are particularly significant in this case include:
 - *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.*
 - *Empathy: We seek understanding of and consider the experience and perspective of those we serve. It's about walking in other people's shoes.*
72. Custody Officer B's sexually-related conduct towards Custody Officer's A, E and J was inappropriate and potentially criminal. His actions were in breach of Police policy, the Police Code of Conduct and Police values.
73. Custody Officer B was convicted of male assaults female regarding:

⁶ See paragraphs 120 to 124 for relevant information about the Police Code of Conduct and values.

- the incident where he forcefully pulled Custody Officer A into the kitchen (paragraphs 35 - 37); and
- his ongoing behaviour over six months, where he inappropriately touched or caressed Custody Officer A.

FINDINGS ON ISSUE 1

Custody Officer B's sexually-related conduct in relation to Custody Officer A was inappropriate, criminal, and breached Police policy and the Code of Conduct.

Custody Officer B's sexually-related conduct towards Custody Officers E and J was also inappropriate, potentially criminal, and breached Police policy and the Code of Conduct.

ISSUE 2: WAS CUSTODY OFFICER B'S OTHER CONDUCT CONTRARY TO LAW AND POLICY?

Recording prisoners

74. Custody Officers E and M said Custody Officer B and his friends regularly recorded prisoners and shared the videos via Snapchat. Custody Officer B said he Snapchatted videos of his workmates but not prisoners. He said: *'the boys'* loved to sing and Snapchatted themselves doing this: *"It's always either in an empty cell or in the office... just messing about."*
75. The Authority believes Custody Officer B and *'the boys'* did record prisoners and share the videos. This behaviour does not align with Police values, where officers are asked to act with professionalism and respect others by treating them with dignity. It is in breach of Police policy and is also in breach of the Privacy Act 1993, which limits the use of the sharing of information and photos by organisations.

Affiliation to a gang

76. Custody Officers A, K and L told the Authority they suspected Custody Officer B may be affiliated with a gang. Reasons for this included Custody Officer B wearing red accessories such as a watch and bandana,⁷ and his use of the word *'suhwoop'* (a gang call used by the gang). Custody Officers E and M told the Authority they heard him say this to prisoners.
77. Custody Officer B told the Authority that, although he has family and friends who are affiliated with gangs, he is not affiliated himself. He said he has not worn anything red to work to show he is connected to a gang but does wear a watch with a red band. Custody Officer B acknowledged that he has used the term *'suhwoop'* when *"mucking around"* with *'the boys'* but said he has not said it to prisoners. He acknowledged it was an inappropriate expression to use in his workplace, particularly within a criminal justice environment.
78. The Authority considers it inappropriate for Custody Officer B to have used the gang call in his workplace, especially in an environment where gang members could have heard him.

⁷ One of the ways the gang members identify each other is by wearing the colour red.

Stealing at Christmas Party

79. After the Christmas party, Custody Officer A discovered a Bluetooth speaker and a set of headphones were missing. She believed Custody Officer B and ‘the boys’ may have taken them, so she sent them messages asking if they had seen the items to give them an opportunity to return them. Custody Officer B and ‘the boys’ denied taking them. Custody Officer A told Officer D and other staff the speaker and headphones were missing.

Speaker

80. Custody Officer B said he did not tell Custody Officer A he had the speaker: *“I think I was just feeling a bit guilty by then... then I was a bit too scared to.”* He said he had planned to drop the speaker off at Custody Officer A’s house without her knowing but one of ‘the boys’ texted him to say the sergeant had been told about the speaker.
81. Custody Officer B was not rostered to work the week following the party. Twelve days after he took the speaker, he handed it to Officer D. He initially told him he had found it in his car and had a similar one so thought it was his.
82. Custody Officer B sent Custody Officer A a text saying he had told ‘the boys’ to return her stuff and apologised that it had happened. It is unclear when this message was sent.
83. Custody Officer B later admitted in his Police statement that he had taken the speaker. He explained to the Authority he had put it into the car, then went back to the party where he helped clean up before leaving:

“... when [Custody Officer A] called it an early night, I think some of us were a bit bummed so I took the speaker. I said we’ll just go on the road... From there we went straight to the city.”

84. Although Custody Officer B ultimately admitted to taking the speaker, he only returned it after he knew the sergeant was made aware it had been taken, and then he gave various explanations about what had happened to it. Theft or dishonesty of any kind is considered to be serious misconduct according to the Police Code of Conduct. It is also potentially criminal.⁸

Headphones

85. The headphones were left on Custody Officer A’s car windscreen in the early hours of the morning, two days after Custody Officer B gave his sergeant the speaker. Custody Officer A said when her son next went to pair the headphones with a device, it named one of ‘the boys’ as being connected to them. Custody Officer B claimed to have no knowledge of who took the headphones

FINDINGS ON ISSUE 2

It was inappropriate and contrary to law and Police policy for Custody Officer B and other custody officers to record prisoners and share the videos on Snapchat.

⁸ See paragraph 133 for relevant law on stealing.

It was inappropriate for Custody Officer B to use a gang call in his workplace.

It was inappropriate and potentially criminal for Custody Officer B to take the speaker from Custody Officer A's home without her knowledge.

ISSUE 3: DID POLICE APPROPRIATELY ADDRESS CUSTODY OFFICER B'S CONDUCT?

Role of supervising sergeants

86. Regarding harassment, Police policy states:

"NZ Police as an employer will not tolerate any such behaviour in the workplace."

87. Two sergeants, Officers C and D, supervised the Auckland District Court custody officers who were split into four sections. Each sergeant had direct responsibility for two sections, with Officer D supervising the section Custody Officers A and B were in. One sergeant worked the early part of the day and the other worked the later part, as section start times were staggered. About 18 custody officers were rostered on each day, and they rotated around five different roles, such as escorting prisoners from the cells to the courtroom, and supervising prisoners in court.

88. Officer D said he had no issues with Custody Officer B's conduct prior to learning of the allegations and he had not seen him display any of the types of behaviours discussed in this report. He told the Authority: *"He got on well with everybody... [Custody Officer B] was pretty easy-go-lucky so he's pretty comical... he seemed to get on with everybody... I never saw any issue."*

89. Custody Officer B acknowledged to the Authority he deliberately hid his inappropriate behaviour from the supervising sergeants as he knew they would consider it unacceptable. In addition, Custody Officer B's colleagues who either were on the receiving end of his behaviour or witnessed it, did not report it to their supervisors.

90. Custody Officer A told the Authority she believes management would have paid attention if she had told them about being thrown onto the table but otherwise: *"I just didn't think they'd really care... It's sad but it's true."*

91. Other custody officers told the Authority:

- *"I didn't feel safe speaking to the sergeants because they were tied up with the other jobs, always... it seems like they didn't care about us."*
- There was no point saying anything as nothing would change.
- *"I've mentioned things about the boys' behaviour to [Officer D] before and I wouldn't call him a supportive person...."*

Other reasons were also provided to the Authority for the lack of reporting, as outlined in paragraph 98.

92. The Authority accepts Officers C and D cannot be held responsible for not addressing Custody Officer B's inappropriate behaviour until late 2018, as they were unaware of it. They had not witnessed it themselves and were not told about it by staff.
93. When Custody Officer A told Officer C of the sexual harassment, he immediately informed the senior sergeant and Police stood down Custody Officer B while they conducted employment and criminal investigations. The Authority is satisfied Police management responded appropriately as soon as they became aware of the allegations.

Lack of reporting of Custody Officer B's behaviour

94. The Authority was concerned about Custody Officer B's inappropriate behaviour not being reported earlier and felt it may indicate issues with the workplace culture.

Custody Officer A

95. Custody Officer A told the Authority she did not report Custody Officer B's behaviour as she wanted to distance herself from it and she thought she could make him stop. She also felt it was better to *"fly below that radar and get on with things"* and did not want to say something about a colleague that may cause animosity.
96. Custody Officer A also told the Authority she did not often let colleagues see that she thought Custody Officer B's behaviour was unacceptable in order to *"save face"*. She wondered why colleagues watched and laughed but did nothing to stop him. She said she told some colleagues about her concerns but felt people did not want to know: *"No one really cares and no one wants to get involved in anything."*

Other custody officers

97. The Code of Conduct says: *"We protect Police's integrity and reputation by speaking up about any inappropriate behaviour we see and hear."*
98. A number of Custody Officer B's colleagues told the Authority that his behaviour was generally accepted by them. Reasons they gave for not reporting the behaviour included:
- He was joking.
 - Custody Officer A seemed to be enjoying it and was considered to be a *"good sport"* so colleagues were not aware it was having a negative effect on her.
 - Not wanting Custody Officer B to know they had said something: *"...I don't want any sort of fall back on me if things don't go his way."*
 - Feeling fearful of retaliation because of Custody Officer B's possible gang connections.
 - Custody Officer B had too many colleagues who supported him: *"...you can't just say 'that's not the right thing' because there's so many of them."*

- Not being able to prove what they had seen on Snapchat because the videos were no longer available once they had been viewed.
- ‘The boys’ were viewed as “hired muscle” so the sergeants wanted to keep them onsite.

Custody Officer B

99. Custody Officer B said he had never been told before that his conduct was inappropriate. When asked about his ongoing sexual behaviour, Custody Officer B said it was: “... *the way we were down there... like the culture down there... now that I look at it, that culture was real bad.*” He told the Authority it was common for the male and female officers to talk to each other about their sexual relationships, and: “*They sit on my lap and joke around. They sit on my cock....*”

Workplace culture

100. Custody Officer B told Police “*at the Courts... we’re all just like a family*” and his relationship with Custody Officer A was like a brother and sister relationship. He said he “*always had her back*” though did take things “*a bit too far*”. However, Custody Officer A told Police: “*I avoided him. I didn’t like talking to him. He’s just not my type of person. We had nothing in common, other than the fact we were colleagues.*”

101. Custody Officer M said Custody Officer B was “*the type of person who sets the culture*”.

102. Custody Officer B’s colleagues said the following regarding the culture of the custody unit at the time these incidents occurred:

- “*... the level of humour and the things that we talk about and laugh about are probably not what most normal human beings would consider appropriate...*”
- “*... all of us were constantly getting grabbed and cuddled all the time.*”
- “*... the majority of us at the Court at that time didn’t find those sorts of things inappropriate... it’s hard to say that some things that I saw [Custody Officer B] do were inappropriate because that’s what him and a majority of other people were like all the time...*”
- “*... our humours can be very dark and some things like the incident with [Custody Officer A] where you know we tell [Custody Officer B] to put his hands over her mouth... if you break that down that’s talking almost about rape. That’s not funny. Like it is not funny in any sense of the word, but we were laughing about it like it was the most hilarious thing...*” (see paragraph 31).
- “*... a real bad culture, working culture. It’s a type of culture that is very open plan and the staff just talk about each other all the time, it’s just not a healthy place to be...*”

103. It is the Authority’s view that the culture of acceptance by Custody Officers B’s colleagues contributed to Custody Officer B’s behaviour being able to continue over a substantial period of time. It is deeply concerning that a number of Custody Officer B’s colleagues witnessed his

behaviour and considered it to be humorous and acceptable, rather than serious and potentially criminal, and therefore did not report it to the supervising sergeants.⁹

Police addressing the issue of culture

104. Police have done some significant work to address the culture of the Auckland District Court Custody Unit since Custody Officer B's conduct became known to management. Police believe staff are now more aware of what is considered to be inappropriate behaviour and when they have a responsibility to report it.

105. Successive managers have actively sought to improve the workplace culture. This has involved attempting to shift the mindset of staff, setting expectations for attitude and behaviour, and implementing better practices. Police say this work needs to be ongoing and the culture needs to be constantly monitored.

106. Some ways Police have sought to improve the culture are:

- one-on-one conversations with staff;
- surveys;
- splitting the one role of senior sergeant into two roles which affords them more time to 'be present' and supervise staff;
- a message from the District Commander explaining zero tolerance;
- culture workshops;
- more training;
- being mindful of filling positions with people suited to the roles; and
- encouraging managers to be more approachable.

107. We are satisfied the Auckland District Court Custody Unit culture has improved since the incidents discussed in this report and that Police will continue to work on this.

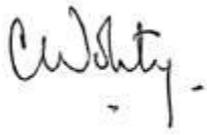
⁹ "The boys" are no longer working at the custody unit.

FINDINGS ON ISSUE 3

Senior Police appropriately addressed Custody Officer B's conduct as soon as they became aware of it.

There was a concerning culture of acceptance in the workplace by Custody Officer B's colleagues which allowed his inappropriate sexual and non-sexual behaviour to continue.

We are satisfied that, since Custody Officer B's conduct came to light, Police have been working to improve the culture at the Auckland District Court Custody Unit and that they will continue to do so.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

1 February 2022

IPCA: 18-1053

Appendix – Laws and Policies

RELEVANT LAW AND POLICIES

Health and Safety at Work Act 2015

108. According to section 36 of the Health and Safety at Work Act 2015, a person conducting a business or undertaking (in this case, Police) must ensure, *“so far as is reasonably practicable”* the health and safety of their workers while they are at work.
109. Section 45 states that, while at work, a worker must *“take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons”*.

Relating to sexual behaviour

Human Rights Act 1993

110. Section 62 of the Human Rights Act 1993 makes it unlawful for any person, in respect of specified areas, to make a request for sexual intercourse, sexual contact, or any other form of sexual activity which contains an implied or express promise of preferential treatment or threat of detrimental treatment.
111. Section 62(2) of the Human Rights Act 1993 makes it unlawful for any person to subject any other person to behaviour:
- *“through use of language, visual material, or physical behaviour of a sexual nature;*
 - *that is unwelcome or offensive (whether or not the other person conveys this to the person), and*
 - *that is either repeated, or of such a significant nature, that it has a detrimental effect on the other person in respect of specified areas. “*
112. Specified areas that might be affected by sexual harassment are set out in subsection 62(3), and include employment and professional opportunities, access to places, vehicles and facilities, and participation in fora for the exchange of ideas and information.
113. Sections 108 and 117 of the Employment Relations Act 2000 contain similar protections specifically relating to sexual harassment in the course of employment.

Crimes Act 1961

114. Section 128(A) of the Crimes Act defines ‘sexual activity’ as being sexual connection with a person or: *“the doing on the person of an indecent act that, without the person’s consent, would be an indecent assault of the person.”* It stipulates that a person does not allow sexual activity if they allow it because of force applied to them, a threat, or fear the offender will use force.
115. Section 135 of the Crimes Act states:

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

116. According to section 194 of the Crimes Act, a male who assaults a female is liable to be imprisoned for up to 2 years.

‘Discrimination and harassment’ policy

117. The Police ‘Discrimination and harassment’ policy states:

“Any discrimination and/or harassment is unlawful and unacceptable. NZ Police as an employer will not tolerate any such behaviour in the workplace.”

118. The policy sets out a procedure for handling allegations of discrimination and harassment in line with Police obligations under the Human Rights Act 1993, the Health and Safety at Work Act 2015, and the Employment Relations Act 2000. The policy also refers to the Police Code of Conduct and core Police Values.

119. The policy describes ‘sexual harassment’ with reference to section 62 of the Human Rights Act 1993:

“Sexual harassment of an employee, volunteer or contractor occurs if any person engaged by Police, directly or indirectly, either:

- *by the use of language (written or spoken) of a sexual nature, visual material of a sexual nature, or physical behaviour of a sexual nature subjects the employee, volunteer or contractor to behaviour that is unwelcome or offensive to them (whether or not that is conveyed to the person) and that is either repeated, or of such a significant nature, that it has a detrimental effect on the employee's, volunteer's or contractor's employment, job performance or job satisfaction.”*

New Zealand Police Code of Conduct

120. The 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.

121. 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).”*

122. The Code of Conduct makes repeated references to appropriate behaviour, for example:

- *“We protect Police’s integrity and reputation by speaking up about any inappropriate behaviour we see and hear. By addressing inappropriate behaviour either directly or through managers, we make Police a safer and happier workplace.”*

...

- *“It also includes 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.”*

123. 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.

Police Values

124. 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.*
- *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.”*

Relating to the use of Snapchat

Harmful Digital Communications Act 2015

125. The purpose of this Act is to:

- a) “deter, prevent, and mitigate harm caused to individuals by digital communications; and
- b) provide victims of harmful digital communications with a quick and efficient means of redress.”

126. An intimate visual recording is a visual recording, such as a photograph or digital image, that is made “*with or without the knowledge or consent of the individual who is the subject of the recording*”; the individual is in a place which they could reasonably expect to have privacy; they are naked or have private parts of their body exposed; they are engaged in intimate sexual activity; or they are showering/toileting/dressing.

127. The principles of the Act include that a digital communication should not:

- be threatening, intimidating, or menacing;
- be grossly offensive to a reasonable person in the position of the affected individual;
- be indecent or obscene;
- be used to harass an individual; or
- denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability.

128. The Act says: “*A person commits an offence if posting the communication would cause harm to an ordinary reasonable person in the position of the victim*”.

Privacy Act 1993

129. Principle 10 of the Privacy Act provides limits on the use of personal information by agencies: “*An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose*” unless in certain circumstances, as stated in the Act. Principle 11 also places limits on disclosure of personal information.

130. If an agency or organisation (with a few exceptions, like the news media) has taken photos where individuals can be identified, under the Privacy Act, they must not disclose or publish that photo unless they've got consent or another exception applies.

'Social Media' Policy

131. The Police Social Media policy says it is "*crucial that personal and work social media activity remains separate*". Police employees must be aware of the risks of using social sites and take steps to protect the reputation of colleagues, the Police and others. Guidelines are in place to ensure the online presence of the Police supports their goals and targets, "*especially to increase public trust and confidence*". The policy specifically lists the following as "Don'ts":

- "*Posting photos of yourself in uniform on personal social media accounts, or anything that identifies you as a Police officer is not recommended...*
- "*Don't post anything that can bring Police into disrepute or negatively impact the reputation of Police (i.e. anything in breach of our Code of Conduct).*

132. The policy also says employees should ensure their personal page/account is free from any instances where an individual's privacy is breached. Employees must comply with the Privacy Act 1993, and not post personal information online without an individual's consent.

Relating to stealing

Crimes Amendment Act 2003

133. Section 213 says theft or stealing includes: "*... dishonestly and without claim of right, taking any property with intent to deprive any owner permanently of that property...*" According to the Act, if the value of the property stolen exceeds \$500 but does not exceed \$1,000, the person who took the property may face imprisonment for up to a year.

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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.



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