

REPORT OF THE POLICE COMPLAINTS AUTHORITY ON MAKAREWA CRASH - 14 APRIL 1995 WHICH CLAIMED THREE LIVES

INTRODUCTION

At approximately 11.00pm on 14 April 1995 Mr Trevor McLeay was travelling south towards his home in Invercargill on State Highway 6. He was driving an almost new Honda Accord. At the same time three young women were travelling north on the same road in a Honda CRX to their respective homes near Winton. The direction of the highway is practically north/south. Just north of Makarewa Bridge the two cars collided head-on at a long slow bend towards the east. There were no witnesses. The three young women died instantly. Their vehicle was engulfed in flames. Mr McLeay received moderate injuries, and was taken to Southland Hospital. Some two and a half hours after the crash a blood specimen was taken from Mr McLeay at the request of Police. Mr McLeay states he had no recollection of the crash, or of events immediately preceding it.

Within minutes of the crash the Police arrived on the scene. When Sergeant Jensen reached there at about 11.10pm there were already an ambulance and two Police officers present. A fire appliance was dealing with the burning vehicle. On the night (and for some time thereafter) differing views were held by Police officers at the scene as to the cause of the crash, and where blame might lie. That positive views about blame were expressed so prematurely is now identified as a wholly inappropriate response and a root cause of the inadequacy of the early investigation.

The specimen of blood taken revealed on analysis a blood alcohol level of 195mg per 100ml of blood. This is well over twice the legal limit. It is important to note that the scientific and objective assessment of the level of alcohol in Mr McLeay's blood at the time of the crash was not known to Police until 26 April 1995 with receipt of the analysis from the ESR. I will return to this point later. As a result of the Police investigation the decision was made to charge Mr McLeay with driving with excessive blood alcohol concentration. Mr McLeay pleaded not guilty and defended the charge. On 14 August 1995 he was convicted on that

charge. On 25 August 1995 he was fined \$2000 and disqualified from driving for 12 months. He did not appeal this conviction or sentence.

In December 1995 a Coroner's Inquest was held into the deaths of the three victims. This was the first time there had been a judicial evaluation of the cause of the crash itself. After hearing expert evidence the Coroner concluded that Mr McLeay was driving on the wrong side of the road prior to the crash, and he held him to blame. The Coroner's decision sharply differed from the Police view as evidenced by the laying of only the charge of driving with an excess blood alcohol concentration. The Coroner firmly blamed Mr McLeay for the crash. Police then reviewed the file and the result was that on 8 March 1996 Mr McLeay was charged with causing the deaths of the three young women by the unlawful act of driving with excessive blood alcohol concentration, or, alternatively, by driving dangerously thereby committing manslaughter.

There followed a trial before a Judge and jury in the High Court at Christchurch between 5 and 13 August 1996. In the result Mr McLeay was convicted by the jury on three counts of manslaughter for causing death by the unlawful act of driving with excessive blood alcohol concentration.

He was sentenced to two and a half years' imprisonment on each charge. The sentences were concurrent so that the effective term imposed was two and a half years. He was also disqualified from holding or obtaining a driver's licence for a period of three and a half years which took into account the earlier period of twelve months' disqualification.

He appealed his convictions to the Court of Appeal. In a reserved written decision on 14 April 1997 the Court dismissed the appeal. These matters will be explored hereafter.

INVOLVEMENT OF THE POLICE COMPLAINTS AUTHORITY

The Authority received in total three complaints concerning the original Police investigation and first prosecutorial decision. The date upon which these complaints were received is of importance. Constable Cairns (since disengaged from Police) made the first complaint on 14 June 1995, exactly two months after the crash and before a Court decision had been made on the one charge Mr McLeay faced. Mr and Mrs Horgan and Mr and Mrs Hamilton, the parents of two young women who died in the crash later complained to the Authority through their solicitors on 29 September 1995, (before the Coroner's Inquest) and 2 February 1996, respectively. The parents of the third victim, Mr and Mrs Armstrong, live in New Plymouth and later joined in the complaint made by Mr and Mrs Horgan. The substance of the parents' complaints, and that of the Police officer was that the original investigation had been

neglectful and the wrong decision had been made in regard to the first charge laid against Mr McLeay. The Police officer's complaints made an allegation of corruption by cover up which was addressed immediately by the Regional Commander, and found to have no substance. That is dealt with separately hereafter.

I think it is appropriate early to say something of the policy of this report which is to be made public. The incident itself resulted in the tragic deaths on the highway of three young women and the circumstances of its occurrence caused deep shock in the district itself. That shock later spread, and finally brought the event to national attention, with strong focus being directed at the Police failures in the investigation and faulty initial prosecutorial decision-making. These matters are encompassed in the complaints made and will be addressed.

This report has another remedial purpose which I hope will emerge from its analysis of the events and the final recommendations. This other purpose of the report is for the future. The failures of the initial investigation are dealt with and are not ignored.. However, simple scapegoating is a sterile exercise and rarely productive of genuine reform. For the immediate families of the three deceased young women I imagine the most acceptable solace to them is to know that such events will be dealt with differently in the future. From this tragic event lessons can be learned so that the future handling of these life-taking crashes can be done in a better, fairer and more sensitive way.

The importance of highway crash investigation and subsequent decision-making cannot be over-emphasised. One of the primary lessons of this Authority's investigation and report is that Police must reschedule their priorities so as to give greater prominence to this type of investigation.

No matter how blameworthy, neglectful, and inadequate investigations of the crash were, and misjudgment about the prosecution made, it must be remembered they arose after the tragic event and had absolutely nothing to do with its cause. The cause has now been decided by the criminal justice system.

I will be satisfied if this report not only explains one incident to the public and families affected, but is put to immediate use by the Police (many of its lessons have already been incorporated in standard Police procedure, which I will mention later) to establish a modern, more scientifically based crash investigation procedure to ensure fairness in decision-making to all those unfortunate enough to have participated in such an event. Moreover, and most importantly, to relieve the suffering and distress of the victims who because of their close relationships with participants in highway crashes are properly described as victims.

EVENTS PRECEDING THE CRASH

On Friday 14 April Mr McLeay left Invercargill about 10.15am. He was going to the Queenstown area to compete in a triathlon at Lake Hayes. He reached Lake Hayes about 12.30pm. The triathlon (performed by teams of three participants) started about 1.00pm with the swimming section. Mr McLeay began the cycle section of 30 kilometres about 1.30pm being his leg of the event. It lasted about one hour. After finishing he got changed and walked to the finishing line to await the runner in his team. While chatting with people there he consumed alcohol. He then left to visit a friend in Queenstown but the friend was not at home. Thereafter he went to the Royal Oak Hotel in Arrowtown to meet with friends for the presentation. At the hotel he consumed alcoholic drinks but said he was not sure how much. He had eaten little in the course of the day.

Mr McLeay left Arrowtown to return to his home in Invercargill about 8.30pm. He was alone and travelling south as he approached the crash bend about 11pm.

The occupants of the CRX on this Good Friday were the driver, Megan Hamilton, (she also owned the vehicle) aged 22; Virginia Armstrong, aged 21 and Bridgette Horgan aged 19. They had been to Invercargill to see a film. The film began at 8.30pm and got out around 10.00pm. After the film, according to a young woman who was with them at the theatre, they decided to drive straight home. The CRX was then travelling north towards the girls' homes near Winton about 11.00pm as it approached the crash bend.

I have read the Reports to the Coroner by the pathologist, Dr A D Pettigrew. There are three separate reports relating to the deceased individuals travelling in the Honda CRX. All reports state that blood specimens from the victims were sent to ESR (Forensic) and in each case was reported to contain no alcohol.

EVENTS AT SCENE OF CRASH ON NIGHT OF 14/15 APRIL 1995

The first persons to arrive at the scene of the crash were Mr and Mrs Cecil Blair. They were travelling in a car a short distance behind Mr McLeay. They did not see the crash, but arrived very soon afterwards. They put the time of the crash at just after 11.00pm. Soon other cars arrived and one quickly sped to arrange a call for help from a nearby house where lights were on.

The Police Operations Telephone Message records the call for help being received by Police at 2304 hours (11.04pm). Sergeant Jensen, who was to be officer in charge, arrived at the scene at about 2310 hours, some six minutes later. By then an ambulance and Constables

Seator and Scully had already arrived. State Highway 6, in the stretch of roadway where the crash occurred, runs practically in a north/south direction. The crash took place where the roadway just began to deviate to the left for a southbound vehicle into a long slow bend following that direction. After the impact the Honda Accord was in its wrong lane (west lane) turned facing north-east. The front driver's side of the vehicle was slightly over the centre line at an angle. The Honda CRX finished off the roadway on the eastern side on the shoulder and was facing north.

As to be expected, there was much debris between the two vehicles. It is described as being like confetti and scattered across the road in the area of the southbound lane. There were no skid marks. The weather was fine but, of course, it was nighttime.

The CRX was engulfed in flames and because of the intensity of the heat Police could not approach it.

Sergeant Jensen, on his arrival, immediately took control. He spoke to Constable Scully and learned there were persons in the blazing CRX. He directed Constable Scully to stay with Mr McLeay. He spoke to Mr and Mrs Blair and to Mr Geoffrey Fellow who was third on the scene. He recorded their details, but learned they had not witnessed the crash.

Through Operations Sergeant Jensen requested a photographer, an accident investigator, a salvage vehicle, a funeral director and Constables Ng and Temple for the purpose of body recovery. Later he confirmed Constable Scully was with Mr McLeay. He recognised Mr McLeay, but did not speak to him. His observation of him I will record hereafter.

Constable D J Blanks, the Specialist Accident Investigator, was called from his home at 2320 hours by Senior Sergeant Jones, who was in charge of the Invercargill Police Station. He reached the scene at 2335 hours. He marked the position of the vehicles as described above. There were a number of gouges in the roadway in the southbound lane.

At 2340 hours Constable Scully was directed by Sergeant Jensen to follow the ambulance transporting Mr McLeay to Southland Hospital and to arrange for a blood sample to be obtained. This he did, and later obtained such a sample and secured it. The sample was taken at 0130 hours, some two and a half hours after the crash.

Constable Blanks, who was called to the scene as a Specialist Crash Investigator, formed an opinion on the night that at the time of impact both vehicles were in the southbound lane, but with no witnesses he was uncertain where the vehicles were positioned prior to the impact.

The photographer, Senior Constable Lieshout, reached the scene at 2330 hours. He spoke to Sergeant Jensen who asked him to take photographs of the scene and vehicles in situ. Constable Lieshout said the scene at the time was very congested with vehicles, fire engines, tow trucks and Police vehicles and their personnel. Constable Lieshout said these photographs were taken and he returned to the Police station at 0045 hours. At 0130 hours he took further photographs of the vehicles and of the bodies of the victims.

At the scene Sergeant Jensen concluded from his initial observations that Mr McLeay had, on entering the bend, continued in a straight line, crossing over into the northbound lane. Constable Ng and Lieshout considered at the time of impact Mr McLeay was on the wrong side of the road.

The following staff attended the scene that night. Sergeant Jensen, Constables Ng, Temple, Lieshout, Scully, Blanks, Seator and Dunne (Winton Police). At the scene that night there were differing views as to which driver was to blame for the crash, which I have previously commented was precipitate.

Constable Blanks, the Specialist Crash Investigator called out that night, as I have already recorded, believed the point of impact was in the southbound lane, that is on Mr McLeay's side of the road.

These views formed in the very distressing circumstances of this night must be characterised as preliminary and premature conclusions as to fault. It is elementary to say that in such circumstances the function of Police should be to gather hard evidence and leave evaluation and assessment to a later date. Officers should not take up early positions on questions of fault. These premature views on distributive fault seemed to unduly influence decisions in the days ahead. The result was various officers with no direct responsibility continued to make individual assessments with limited knowledge and this characterised the investigation over the next few days. In addition it is universally recognised that the level of alcohol in a driver's blood is of crucial importance in evaluating a crash incident. There is no substitute for a scientifically based analysis of blood alcohol levels. Such a factor is of relevance in the sometimes delicate decisions on causation. All decisions on blame should be suspended until the blood alcohol levels are known, or for that matter, any other tests that are to be carried out with results to come in at a later date. In this case the blood/alcohol information on the driver of the Honda Accord was not available until 12 days after the crash.

There was a considerable amount of oil and petrol and broken vehicle debris at the scene which might endanger other vehicles so the fire service hosed and swept the road. After this there was still oil on the road and a request was made to Operations to notify the roading authority to have grit placed on the road and warning signs erected. At 0300 hours Sergeant Jensen left the scene. He left the Wallacetown Fire Brigade to clear the road of remaining debris and to assist in the removal of the Honda Accord. This was an unfortunate decision. At a scene of a Police investigation preservation of an uncontaminated site is of primary importance. So early in the investigation, and especially during the hours of darkness, it is not possible to make worthwhile decisions on relevance of material arising out of a crash. The only safe course is to preserve the site untouched and wait for the opportunity of an unhurried assessment in daylight hours of all available evidence.

On the night at the scene Sergeant Jensen did consider preserving the site for a daylight examination. There was an alternative bypass route available. However, he decided, admittedly after discussions with Senior Sergeant Jones at the Invercargill Police Station and others, against preservation as Constable Blanks was satisfied with his initial investigation and scene photographs had been taken. Another important consideration was that he believed there would be problems in removing the bodies of the victims at the scene. I refer to this point later in the report.

On the spot that night the question of Mr McLeay's consumption of alcohol was already raised as an issue. Sergeant Jensen, in a job sheet dated 27 April 1995, records:

“Approach Constable Scully who is in paddock to the west of the accident scene with male driver of the Honda Accord whom I recognise as Trevor McLeay, local jeweller. He appeared to be affected by alcohol and was incoherent while being spoken to by ambulance. I did not speak to him personally.”

Sergeant Jensen took the correct step in directing Constable Scully to go to the hospital and ensure a blood specimen was obtained from Mr McLeay.

Constable Seator said that he did speak to Mr McLeay but he was not very talkative. He said he did not interview him as such. He said he could not smell any alcohol on him and he didn't sound “pissed”, but there was a fire raging at the time and a bit of wind about.

Constable Scully, in a Job Sheet dated 15 April 1995, the day after the accident, records he spoke briefly to Mr McLeay at the scene and found him to be in a dazed and confused state. He said all he could remember of the accident was a dazzle of car lights in front of him. In

that job sheet, he makes no mention of alcohol. Later he was to say he had been told by a doctor and two ambulance officers Mr McLeay had been drinking.

Mr Blair, the driver of the first car on the scene, spoke to Mr McLeay. He said he could smell beer on his breath "*but he didn't reek of it*". Mrs Blair said Mr McLeay was incoherent but she did not know if this was due to shock or drink. He denied to her he had been drinking. She said she could smell alcohol on his breath, but you had to be close to smell it.

I have spent some time on the events at the scene. What this analysis reveals was an horrific crash at night on a country road with no independent witnesses. The crash site, after other vehicles arrived, was confused and chaotic, exacerbated by the fierce fire of one of the crash vehicles.

It must be recognised that this crash was a most traumatic experience for the attending Police.

Separating the crash site investigation that night from other issues next to be addressed I find that the one clearly identifiable error was allowing the roadway to be cleaned down. It was also regrettable that officers too readily and too early started going down the path of deciding blame. Otherwise the handling, given the massive difficulties, was reasonably done under very trying circumstances. Even expressing opinions on blame I am sure were done tentatively, and if asked any of the officers would have quickly agreed such opinions were subject to final evaluation which they would have expected to occur later.

ACTIONS OF POLICE IN FOLLOWING 12 DAYS UP TO 26 APRIL 1995

On Saturday 15 April Constable Hurley took over the file. He replaced Constable Blanks who asked to be relieved of it as he knew the driver of the CRX. Constable Hurley had not attended the crash the night before. At 8.50am he made a preliminary inspection of the two vehicles which were in a locked shed at the Police station.

At 9.20am alone he carried out his first inspection of the crash scene. At about 9.45am he picked up Constable Blanks from his home. They went to the scene and together made a detailed inspection and took some measurements. Apart from scrape marks on the bitumen the scene was basically destroyed. It had been hosed down and there was grit on the roadway. All debris was dumped in a ditch to the east of the carriageway. There were no skid marks. The two constables discussed what marks were there and their relevance. Constable Hurley asked where dirt particles had dropped, where fluid was seen and what other debris was present on the night. He was told all the debris was in the southbound lane. The constables walked around the scene and Constable Blanks pointed out precisely where he recalled debris had lain.

I pause here to make some comments on Constable Blanks' position. At the scene some hours earlier he had discovered evidence (cheque book of Megan Hamilton) that revealed to him that he knew personally the driver of the Honda CRX and he asked then to be relieved of further involvement. That is a proper course to adopt if he felt he could no longer exercise objective judgment, or because professional involvement might affect him in some other way. Having taken that decision, in my view, he should no longer have continued any association with the Police investigation. It may be he was able to supply some information about the crash site that had been lost with the cleaning, but such information was possibly available elsewhere. However, the main point is that Constable Blanks was one of the first officers on the scene after the crash and he formed an early opinion the crash occurred on Mr McLeay's side of the roadway, suggesting the CRX driver had crossed the centre line and possibly caused the collision. I am satisfied Constable Blanks' view influenced that of Constable Hurley, who by then had been assigned the Police file.

Constable Lieshout, the Police photographer, arrived around midday and in the presence of Constable Hurley took photographs. Later he also took more photographs of the vehicles at the Police Station.

Constable Hurley reached a preliminary conclusion that blame for the accident lay with the driver of the CRX. The same day Constable Hurley said that he was told by Constable Scully

that at the time of the crash Mr McLeay was sober. Constable Scully, when interviewed as part of this investigation, had no recollection of talking to Constable Hurley on that day. In any event Constable Hurley conducted his investigation on the basis that he could ignore alcohol as a causative factor. This was a basic error for reasons I have already given.

At 3.30pm on this Saturday, Constable Hurley again inspected the vehicles. Because of the ravages of fire he said little evidence could be found on the CRX. The Honda Accord was described as near-new with the tyres in excellent condition and it was fitted with ABS braking. The warrant of fitness did not expire until 27 November 1995. There was nothing, to indicate the possibility of vehicle fault for the Accord. However, this view must be tempered by the fact it was reached only by a visual examination and was not professionally based by examination of an automotive engineer.

He worked that day until 6.00pm and then went home. However, he was called out again about an hour later for yet another fatal crash. He worked on this until 1.30am the next day, that is Sunday 16 April. In short Constable Hurley had "inherited" two fatal crashes occurring on consecutive days.

That day, while visiting the hospital in connection with this second fatal crash, he spoke briefly to Mr McLeay who was being visited there by his family. He told Mr McLeay he would interview him as soon as practicable.

On Easter Sunday he telephoned Mr and Mrs Hamilton. Mr Hamilton said he was told there was no alcohol involved in the accident. He said he was also told it appeared Megan had drifted across the centre line. Constable Hurley says he does not recall mentioning alcohol, and his recollection of what was said differs somewhat from Mr Hamilton's recollection. However, I cannot refrain from observing this conversation was an error of judgment on Constable Hurley's part.

On 17 April Constable Hurley re-measured the crash scene with Constable Grumball. On 18 April he interviewed Mr McLeay at his home. He took a full statement from him.

Constable Hurley on Saturday 15 April says that he telephoned Mr Ross Bain the Manager of the Vehicle Testing Station at Invercargill. He asked what the chances would be of having both vehicles inspected. He was told there would be nobody working until Wednesday. This was Easter weekend. Mr Bain did say he would open up the testing station to secure the vehicles until they could be tested. Mr Bain cannot now recall this conversation. The following Monday or Tuesday Constable Hurley telephoned Mr Bain and told him that a

decision had been made the vehicles would not now be inspected. It appears that it was Senior Sergeant Jones who gave the authority to release the vehicles without inspection. Senior Sergeant Jones said he made this decision after speaking with Constable Hurley who it seems believed inspection would not yield any worthwhile evidence.

So it was four days after the crash the Police released the two vehicles to the respective insurers. This decision was a crucial one, and it was wrong. It effectively, from the Police investigation perspective, abandoned the cars as able to supply any relevant information or evidence without any professional focussed investigation to ascertain what might be revealed. At the forefront of a professional examination would be causation.

A further result of the decision to release the vehicles to insurers meant that Police relinquished control of the vehicles as to disposal. Apart altogether from evidence that might have been available it was Police responsibility to ensure that a vehicle in which three young women were incinerated was handled in the immediate future in a very sensitive manner. One of the parents claimed he was affronted that the vehicle which could have retained some ashen remains of the victims was buried in a tip. Those comments, in my view, are indisputably correct.

It was not Police who later arranged for the CRX to be buried at the tip. A tarpaulin covered the vehicle at the panel beater's yard where it had been taken. However, people showing a macabre interest in it, tried to photograph it and take souvenirs. It was at the instigation of the assurance assessor that a decision was made, after some consultation with the family, to dispose of the vehicle. The family were not aware precisely where the vehicle would be taken for disposal.

Detective Lee (who has since disengaged from the Police), was Constable Hurley's immediate supervisor, and she returned from leave on Tuesday 18 April. She requested the file and received it on Monday 24 April.

In the days following the crash, Constable Hurley dealt with this file without any supervision even at NCO level. This despite the magnitude of the tragedy. He said that most of the staff at this Easter period were given time off, especially those who had worked on a recent major murder enquiry. All he could do was to go to any duty senior sergeant for any advice. On 26 April 1995 Constable Hurley asked to be relieved of the file as he was not able to handle two fatal crash files at the same time. No enquiries were made in this first 12 days regarding Mr McLeay's movements on the day of the crash. This was because Constable

Hurley believed alcohol was not a factor for consideration. On 26 April, however, all this changed.

ACTIONS OF POLICE ON WEDNESDAY 26 APRIL 1995

This was a very important day in the investigation. It was the first day Detective Lee had a chance to consider the file which had been delivered to her on Monday 24 April. Shortly thereafter she obtained from the ESR by telephone a preliminary report that Mr McLeay's blood analysis had revealed an alcohol content of 195mg of alcohol per 100ml of blood. She was told the certificate would be in Invercargill by Friday. I have seen the certificate and it is in fact dated 26 April.

At 1530 hours Detective Lee went to the scene with Sergeant Jensen. The sergeant explained to her the location of vehicles on the night of the crash. She requested him to prepare a report and this he did on 27 April.

She made a decision to retain the file herself as she was not happy directing somebody else to take it over due to *"the already flawed nature of the file."* She spoke to Detective Sergeant Hewett. He had been on annual leave from 12 to 25 April inclusive. She expressed her serious concerns to him. He understood and approved of her action. Many of the deficiencies identified by Detective Lee have been already commented upon earlier in this report.

The concerns emanating from the file were now, of course, subject to and affected by the knowledge of a very high blood alcohol level for the driver of the Accord. Detective Sergeant Hewett and Detective Lee went and saw Inspector O'Neill. They sought his authority to engage a professional engineer to investigate the cause of the crash. They were also concerned that there were conflicting views within the Station as to who was to blame for this tragedy. The request was declined for reasons which will be outlined later. However, Inspector O'Neill did say he would have Constable Piercy review the file. This officer had just completed a Crash Investigation course.

Detective Lee was very concerned when she saw the state of the file and learned of the result of the blood analysis. When she had spoken to Constable Hurley the week before she was given the clear impression that the CRX had cut the corner and *"it was all cut and dried"* as she said in her subsequent statement. She was told the crash had occurred in the southbound lane and the driver of the CRX was at fault. In a report dated 18 May 1995 the Detective says that when she perused the file she found evidence of an incomplete

investigation. There were many reasons for this, she records, and all did not lie with Constable Hurley. She learned that the vehicles had been released on Tuesday 18 April by Senior Sergeant Jones. On 26 April she learned that the CRX had been buried at the Invercargill tip and the other vehicle had been taken to Honda Cars in Dee Street in Invercargill. She was very concerned that no vehicle inspection had been completed on either vehicle. She was also concerned that Mr McLeay was interviewed after the release of the vehicles. Hence any information gleaned from him could not be verified as the vehicles had been already released. The first persons to reach the scene and officers who attended the scene had not been interviewed, and detailed job sheets had not been obtained from attending officers. A further worry was that the scene had not been examined fully at the time of the crash. The conclusion she reached was that there was haste in getting the road cleared as a first priority as opposed to the investigation of the deaths of three people, which seemed to be a secondary consideration.

In a statement on 27 June 1995 she records:

“When I read the file it was blatantly obvious that the accident had not been properly investigated.”

DECISION OF POLICE LEADING TO FIRST COURT HEARING

On 18 May 1995 Detective Lee analysed the investigation to that point. In a detailed six-page report to be forwarded through her superior to Inspector O'Neill, she made a recommendation that Mr McLeay be charged with driving with excess blood alcohol. It is clear from her report it was not an easy conclusion to reach. She had, herself, interviewed Mr McLeay on 4 May. She had closely questioned him on his alcohol consumption on the day.

She reached a final conclusion after her evaluation of the file. The conclusion reached was that nobody could say beyond reasonable doubt which of the two competing scenarios was the cause of the crash. Her efforts at resolution were hampered by the inadequate initial scene examination and the failure to have the vehicles examined. It is obvious that the

premature judgments, inadequate investigation, and premature cleaning of the scene with loss of possible relevant evidence continued to affect this file.

Detective Lee's recommendation was adopted by Inspector O'Neill. He spoke with Senior Constable Lieshout, Constables Piercy and Hurley and Detective Lee. He asked Constable Lieshout, who held a contrary view to the other two, where the evidence was to support his

view. The constable said he was very familiar with the road and so believed his view was correct.

After this meeting Inspector O'Neill made a recommendation to the District Commander that on the evidence available, a charge of driving with excess blood alcohol was the only charge that could be successfully brought against Mr McLeay. Put shortly Detective Lee's conclusion in her report of 18 May 1995 was accepted by her seniors to whom the file was submitted. That decision was made on an already identified faulty handling of the investigation in several ways already mentioned and was a decision made by Police officers alone without any independent professional assistance of any kind.

That charge was duly laid with a date for first calling on 2 June 1995. The hearing of the charge, however, was delayed because of a supervening event next to be mentioned.

CONSTABLE CAIRNS' ALLEGATION OF COVER-UP

On 14 June Constable Cairns made a complaint to the Authority alleging, among other matters, this:

"I firmly believe that a deliberate attempt has been made to cover for Mr McLeay by Inspector O'Neill backed possibly in ignorance by Superintendant (sic) Cook."

This was made by a serving Police officer within the Invercargill Police Station but who had had little direct involvement with the file but still knew much about it. The complaint was made after the decision to lay the one charge which had yet to be heard.

It was then necessary to deal with this serious allegation before the charge as laid could proceed. The Commissioner immediately set in motion a top-level Police inquiry. Assistant Commissioner Holyoake headed the inquiry, assisted by Superintendent Millar and Inspector Campbell. I was kept fully informed throughout. Superintendent Millar completed his report by 29 June 1995. He concluded that the initial investigation was *"poorly done overall"*.

However, as to a cover-up, he said:

“The insinuation that Inspector O’Neill endeavoured to cover up for McLeay has no basis. I accept Inspector O’Neill did not know McLeay and did not bring any improper influence to unjustly minimise McLeay’s liability.”

This view was endorsed by Assistant Commissioner Holyoake, in an interim report dated 3 July 1995. On the following day, 4 July, Inspector Campbell travelled to Invercargill and, on the direction of Assistant Commissioner Holyoake, spent some time with Constable Cairns. He fully briefed him on the findings of Superintendent Millar in his report of 29 June 1995. After the meeting he recorded this:

“The constable said that he was more than happy with the findings. He said that he was satisfied that a proper investigation into the motor accident had been carried out and he was also satisfied there had been no improper influence in relation to the charge laid against McLeay by any of the Police officers, including District Commander Cook and Inspector O’Neill.”

I cannot let pass difficulties with this description of what occurred between Inspector Campbell and Constable Cairns. I do not entirely accept it was accurate. I accept, as I say later in this report, there was no improper cover by Police officers in relation to the charge laid against McLeay. However Superintendent Millar in a report had already stated the investigation was *“poorly done overall”*.

With this conclusion, the way was cleared for the case against Mr McLeay to proceed. The other allegations of incompetence by Constable Cairns are embraced by similar allegations made in the parents’ complaints. I return again to the cover-up allegation made because of its potentially damaging nature over and beyond incompetence and neglect.

DECISION OF DISTRICT COURT AT FIRST HEARING

A plea of not guilty was entered to the charge, relying, it appears, on an alleged defect in one of the certificates to be produced. However on 14 August 1995, Mr McLeay was convicted and was later fined \$2,000 and was banned from driving for 12 months. At this hearing there was no real examination of the causes of the crash which was simply accepted as an event that had occurred.

CORONER’S INQUEST

On 15 and 18 December 1995 a Coroner’s Inquest was held into the deaths of the three young women. The Coroner’s hearing was a real point of departure in regard to this case. A Coroner’s hearing is basically concerned with establishing a person has died, that person’s identity, where he or she died, and the cause of death. A very significant event occurred with

the entry into the hearing as a volunteer on behalf of the families of Mr C C O Marks, a civil engineer from Auckland, who is an expert vehicle crash analyst. Mr Marks gave expert evidence to the Coroner which concluded Mr McLeay's vehicle was on its wrong side and effectively caused the crash. In the result, Mr L T Savage, the Coroner, made a finding that was clear and unequivocal. He held, on the evidence before him, that Mr McLeay was to blame for the deaths of these young women. The finding raised the possibility of future charges being laid against Mr McLeay.

Mr Savage said, in the course of his oral decision:

"What the Police did or did not do following the accident is really not part of the cause of the deaths ... the Police Complaints Authority is the tribunal that must inquire into those type of considerations. But to some extent there is an overlap because Police actions or inactions in investigating a motor accident can have a very distinct bearing on the ability of the Coroner, or any other tribunal, to determine what the facts were."

After a careful analysis of the evidence, he reached the following conclusions:

"... I find that immediately prior to the impact and prior to the collision the CRX vehicle was on its correct side of the roadway, and at the time of collision it had commenced to take evasive action to its right.

I find that prior to the impact the Honda Accord was on its incorrect side of the roadway and that at the time of impact it was in the course of taking corrective action back to its left."

In reaching this conclusion the Coroner relied heavily on the evidence of Mr Marks, the consulting engineer from Auckland. At the conclusion of his decision, Mr Savage said:

"... I wish to make mention of the fact that the inquiry has been helped immeasurably by the evidence of Mr Marks, who to begin with came forward of his own accord because he was concerned at an apparent failure to explain a serious motor accident fatality."

EVENTS FOLLOWING DECISION OF CORONER - LAYING OF CHARGES OF MANSLAUGHTER - HIGH COURT HEARING AND COURT OF APPEAL DECISION

Following the Coroner's decision Police requested the Invercargill Crown Solicitor to examine the file and to determine whether further action should be taken against Mr McLeay. As a result, on 28 February 1996, Mr McLeay was arrested. He ultimately faced an indictment alleging 6 charges (alternatives) of manslaughter being driving with excess alcohol in the blood or dangerous driving for each of the young women in the CRX. These charges were heard before a Judge and Jury in the High Court at Christchurch with a trial beginning on Monday 5 August and continuing for seven days. The prosecution called 19 witnesses,

including Mr Marks and Dr Allan Stowell, a scientist with the ESR specialising in blood alcohol analysis. The blood sample from Mr McLeay was taken two and a half hours after the accident and given the rate alcohol is shed from the bloodstream, Dr Stowell opined the alcohol level at the time of the accident was of the order of 230mg per 100ml, which is very close to three times the permitted level.

Expert evidence was also called on behalf of Mr McLeay. There was a comprehensive challenge to the Marks' evidence from opposing experts. However, the jury returned a guilty verdict on all three charges relating to driving with excess blood alcohol concentration thereby committing manslaughter.

On 30 August 1996 Mr McLeay was sentenced by the High Court to two and a half years' imprisonment on each charge. The sentences were concurrent so that the effective term imposed was one of two and a half years. He was also disqualified from holding or obtaining a driver's licence for a period of three and a half years. This took into account the earlier period of disqualification for 12 months.

Mr McLeay then appealed to the Court of Appeal. The appeal was heard in Auckland on 26 March 1997 and the Court reserved its decision. On 14 April 1997, in a written decision, the appeal was dismissed.

THE JOINT POLICE COMPLAINTS AUTHORITY AND POLICE INVESTIGATION INTO INCOMPETENCE AND DEFICIENCIES

As a consequence of continuing public concern the Authority and the Commissioner of Police on 3 September 1996 agreed that a completely fresh investigation would be instituted into the original handling of the crash. As Police Complaints Authority I asked that the Deputy Police Complaints Authority, Mr Ewen Robertson, carry out the investigation on behalf of the Authority. On that day I made a press release in which I said that following receipt of a complaint from Mr Cairns, then a serving Police officer, an investigation had been carried out. I pointed out that no decision was made by the Authority on the complaints received because ongoing actions on the file concerning the Inquest and the prosecution of Mr McLeay did not reach a final point until his conviction before a Judge and jury at a trial held in Christchurch. This concluded on 13 August 1996 with three convictions for manslaughter. I said the trial revealed new evidence which seemed to affect the original investigation and which should now be taken into account.

This report has been further delayed as Mr McLeay appealed to the Court of Appeal and it was appropriate I should wait until final disposal by judgment from the Court of Appeal. Especially this is so because grounds on appeal were inadequacy of the Police investigation.

As an indication of how seriously the Commissioner viewed this new enquiry, he appointed a very senior officer, namely Assistant Commissioner Paul Fitzharris, the South Island Regional Commander, to be the investigator with the Deputy Police Complaints Authority. He was assisted by Superintendent Ray Hall. The investigation has been a joint PCA and Police investigation.

It is significant that the Commissioner did not await the result of this investigation to immediately express regret to victims' families for the standard of the Police investigation in this case. He said in a press release also made on 3 September 1996:

"Our preliminary investigation suggests less than required standards in our initial investigation.

Police deeply regret the stress caused to families of the victims by our handling of the initial investigation."

So at the very outset the outcome of this investigation was predicated in clear terms. It was already accepted that Police had made errors in the way the crash was investigated and apologies were tendered in advance of this report to the families of victims. I commend that frank approach.

My Deputy and Assistant Commissioner Fitzharris as part of this more extensive enquiry began their work by travelling together to Invercargill on 31 October 1996 and there interviewed Mr Cairns the first complainant. Mr Fitzharris and Mr Robertson travelled on the afternoon of 31 October to the farm homes of Mr & Mrs Horgan and Mr & Mrs Hamilton and interviewed them. Mr Fitzharris, at a later date, travelled to New Plymouth to interview Mr and Mrs Armstrong, the parents of Virginia killed in the crash. On 1 November other officers involved in the original investigation were interviewed or re-interviewed. Mr Robertson informed me after this section of the joint investigation was done he was satisfied all possible witnesses had been seen. The focus now was on the complaints of Mr Cairns and the parents concerning inadequacy and incompetency in the initial investigation and the first prosecutorial decision. Specifically it had nothing to do with the decision made by Police, with the assistance of the Invercargill Crown Solicitor to lay further charges following the Coroner's findings. Mr Fitzharris completed a written report dated 9 December 1996 addressed to the Commissioner of Police. That report has been made available to me together with 10

Eastlight folders of material so the magnitude of the investigation and review may be appreciated. In the course of the joint investigation 28 persons were interviewed and statements recorded.

HEADS OF COMPLAINT

Before proceeding to deal with individual complaints (most of them already flagged and commented upon in the narrative leading to this point) I make some general remarks. The time has come with this report to bring this tragedy to a close. Towards this end I have selected the central issues that require attention in this report and have not dealt with some other issues which have been overtaken by following events. The Cairns' complaint was made on 14 June 1995, the Horgans on 29 September 1995 and the Hamiltons on 2 February 1996, all before the Police decision, after consultation with the Crown Solicitor, to lay manslaughter charges. Since then there has been a High Court trial in which Mr McLeay was convicted on three counts of manslaughter and the appeal was dealt with in April 1997 when it was dismissed. Some of the matters raised in the three separate complaints do not now have the relevance or significance they may once have had.

Complaint 1

I deal first with the complaint made by Constable Cairns dated 14 June 1995, that is just over two months after the crash. Constable Cairns raised a number of matters concerning incompetence in the investigation but most importantly he made an allegation against senior officers that they were favouring Mr McLeay presumably by authorising only the excess blood alcohol charge. Constable Cairns' complaint was dated 14 June and by then the one charge of driving with excess alcohol in the blood had been laid, but no charge relating directly to the three deaths. Coupled with this there was also a closely related complaint that the summary of facts to go before the Court at the appropriate time was drafted in words favourable to Mr McLeay. If true these allegations are very serious no matter whether they come under the description of cover, or corruption. Although dealt with in an internal investigation referred to earlier this issue of importance needs to be addressed directly by me. The wording of the complaint avers highly improper behaviour by a senior officer to protect Mr McLeay, a prominent local business person, from the consequences of his driving

that night. I repeat here the letter of complaint, after listing a series of concerns, says:

“I firmly believe that a deliberate attempt has been made to cover for Mr McLeay by Inspector O’Neill backed possibly in ignorance by Superintendent (sic) Cook.”

I accept that Constable Cairns at this time must have believed this was improper conduct when he wrote this letter. However, nobody else either within Police or outside Police has suggested to the Authority that the considerable incompetence I have outlined can or should be elevated from incompetence to corruption, to give it its worst description.

These allegations were extremely serious. I have already pointed out there was an immediate top level enquiry ordered by the Commissioner with the result that it was held there was no evidence of any improper conduct.

Mr Fitzharris and Mr Robertson spent some three hours interviewing Constable Cairns on 31 October 1996. The question of corruption by a possible cover-up was put bluntly to him for comment. It seems he now resiles from his initial uncompromising claims but still harbours some lingering doubts despite saying in 1995 that he was then satisfied there was no cover-up.

Assistant Commissioner Fitzharris asked the questions:

Q. *“Do you still think there are elements of deliberate cover-up. Is someone guilty of that?”*

A. *“What raised my concern was that people outside the Police Department told me that McLeay would never see the inside of a Courthouse and that his friends would look after him. Subsequent events kept these concerns to the forefront because there were so many unusual things happening.”*

It seems, then, that these initial comments from unspecified sources outside Police created a deep suspicion which later seemed to be justified by evidence of incompetence and errors of judgment. There then followed more questions on this topic.

Q. *“Do you know yourself of any instance of corruption as it were or deliberate cover-up of some aspects of this enquiry or the incident other than things that were incompetent?”*

A. *“I have got nothing further that I can say about the Police actions that indicate there was anything dishonest.”*

Q. *“The accusation was pointed at O’Neill. Have you got anything*

that you know of that he did that is corrupt or was deliberately done to mislead the Court or the Police?"

- A. *"The summaries, the refusal on two occasions to obtain the services of an engineer. The staff went to him which is the normal thing to do when you want to employ an outside agency and I cannot see the grounds for refusing it."*

I am satisfied there was no evidence of any personal relationship between Mr McLeay and Inspector O'Neill or Superintendent Cook which might suggest inducement for a cover-up. Inspector O'Neill had never met him. Superintendent Cook had met him very briefly on one occasion. No-one has suggested there was any other form of dishonesty to obtain favourable treatment from the Police. I think that needs to be said to clear Mr McLeay of any implication he might have done something to seek or receive favourable treatment. There is not a scintilla of evidence to suggest that he did anything improper whatsoever over the decision to lay the first charge, or at any other time.

I deal with the separate but related allegation that there was somehow construction or tampering with the wording of the summary of facts to put Mr McLeay's involvement in the crash in a more favourable light than was justified by the circumstances. This is a very tenuous allegation to deal with. It is always a difficult matter for prosecution to prepare a summary in drink/driving situations where there has been a fatal crash with no eye-witnesses and it is thought insufficient evidence to establish a causal link between consumption of alcohol and the crash which caused the death. The summary must try to be fair to the offender once a decision is made not to lay other charges. In my view this was a baseless allegation against other senior Police officers. In any event the summary was not required, I assume, as there was a full defended hearing of the charge.

After a most exhaustive enquiry into this crash, especially in the seven day High Court trial, no suggestion was made of a cover-up. Much comment, of course, was critical of the investigation, and I believe with justification.

The Authority too, has examined all this mass of evidence to see if there was any evidence which might indicate a cover-up or corruption. None has been found.

Complaint 2

A common concern was the failure of Police to secure the scene sufficiently for daylight examination. Another aspect, a result of early cleaning of the scene, was that the documentation of Police officers by way of sketches and plans of the roadway were inadequate. If the scene had been left untouched a qualified surveyor could have been called next day to make accurate measurements and properly record where all relevant items were. I have sympathy for the decision to remove the CRX to a venue where the bodies of the victims could be properly recovered, but that does not justify the cleaning down of everything else. In any event the CRX was off the roadway entirely.

I appreciate that it is very easy to be wise after the event. However, I am firmly of the view that with a major tragedy such as this where there were no eye-witnesses, no skid marks some evidence that alcohol may have been a factor and with initial conflicting opinions among Police as to liability, the scene should undoubtedly have been preserved intact until it could have been examined in daylight. I do not overlook the pressures on Police to get the road re-opened. After all, this was Easter weekend with heavy traffic flows. However, there was an adequate detour immediately available. Furthermore, I am also very conscious that a major concern of Sergeant Jensen, the supervisor at the scene, would have been the recovery and identification of the victims and I comment on that above.

Simply identifying a point of impact is not by itself sufficient to determine fault in a case such as this. It is elementary to say that if a driver is confronted by a vehicle speeding towards him on his side of the road, that driver is very likely to take evasive action by heading himself for the opposite side of the road. It is an agony of the moment decision. This is what some expert opinion says happened in this case.

In a job sheet dated 17 May 1995 Constable Blanks said:

"I marked the position of the vehicles and ascertained a point of impact which was approximately 150mm into the southbound lane from the position of the vehicles' scuff marks on the road where the CRX had been pushed backwards after impact and the debris which was mainly in the southbound lane.

My opinion is that at the time of the impact both vehicles were in the southbound lane and with no witnesses or facts I am uncertain where the vehicles were positioned prior to the impact."
(underlining is mine)

I have already recorded that Constable Hurley said when interviewed in the course of the investigation that when he visited the scene the following day, apart from scrape marks on

the bitumen, the scene was basically destroyed. He said it had been hosed down and there was grit on the roadway. In a job sheet dated 1 May 1995 he said:

“It is very difficult to work out a conclusion when you did not actually attend the crash. If you attend the crash at a later time then a lot of the vital evidence has been removed from the scene. In this case all the moveable evidence had been cleared from the scene.”

Nevertheless, after conferring with Constable Blanks he did reach a conclusion that Mr McLeay was not to blame for the accident.

As Mr Fitzharris says in his report to the Commissioner, by the time Constable Hurley received the file the seeds of failure were already sown.

The complaint that Police failed to preserve the scene for a daylight examination, then, is clearly established. As I have stressed earlier the scene should have been preserved like any other crime scene to enable, if possible, a determination to be made as to just how the vehicles were travelling before impact. Later Mr Marks achieved this result despite the paucity of remaining evidence. The responsibility for failure to preserve the scene rested mainly on Sergeant Jensen and on Senior Sergeant Jones, who was the O/C at Invercargill Police station on the night.

Complaint 3

The next common concern voiced relates to the structure of the investigation. A Sergeant was sent to control the scene and a crash investigator and a photographer attended. The next day, of course, Constable Hurley took over the file from Constable Blanks. At this time there was no senior officer in charge of this major enquiry. Constable Hurley had to rely very much on what he was told by Constable Blanks, as I have pointed out.

It is the unequivocal view of Mr Fitzharris that the structure of the investigation was poor. I agree. He said that this enquiry demanded strong leadership, and this at least at senior NCO level with such an officer in firm control of the file from beginning to end. I endorse that.

In my view it was simply not acceptable to leave Constable Hurley to deal with this major case unsupervised. As I have pointed out on a day to day basis he was subject to such directions as he might get from various uniformed senior sergeants. This confirms what I said at the outset. This approach was symptomatic of the fact that Police under-estimated the enormity of the implications of this crash.

To underscore this approach even further, another fatal road crash file was given to Constable Hurley the very next day by the on-duty senior sergeant. I agree with the Assistant Commissioner's expressed opinion that with the importance and complexity of the McLeay case, this was quite inappropriate but was indicative of the low priority the District gave fatal crash inquiries.

Constable Hurley had this file then for just over one week. As I have already noted, his immediate supervisor, former Detective Lee, returned from days off on Tuesday 18 April. Constable Hurley had been given the file on 15 April. Detective Lee, in her statement, said that the constable was due to go on leave so she requested the file which she received on 24 April 1995.

From shortly after he received the file, Constable Hurley believed that Megan Hamilton was in the wrong and that there was no alcohol factor for consideration. The alcohol factor for the first time was abruptly thrust into this investigation on 26 April 1995 when Detective Lee telephoned the ESR. Constable Scully, for his part, says he does not recall imparting the information that alcohol was not a factor.

However, alcohol has been shown to be a matter of prime significance in this case. The unstructured investigation ignored this factor entirely until 12 days after the crash when Detective Lee took action. A properly supervised inquiry giving due recognition to this factor may well have significantly altered the thrust of this investigation. At least it is unlikely decisions on liability would have been made so confidently so early with the tragic consequences of the parents of the driver of the CRX being advised no alcohol was involved and it appeared that the driver of the CRX was to blame.

As I have already observed, the deficiencies of control in respect of Constable Hurley basically continued when Detective Lee assumed control of the file. In my opinion there is a very great difference in making a recommendation and reviewing one made by an inferior ranked officer. Once a firm recommendation is made, as was the case here by Detective Lee, it seemed to be accepted when she ought not to have been left with the responsibility in the first place.

Complaint 4

A further common major ground of concern also was the fact that both vehicles were released by Police without a vehicle inspector and/or engineer inspecting them. This decision was taken by Constable Hurley after consultation with Senior Sergeant Jones. The vehicles

were released, as I have said, to the respective insurers four days after the crash. This is categorised by Assistant Commissioner Fitzharris as a serious error of judgment and I have passed my own comments earlier on this decision. Even if no vehicle testing inspector was immediately available due to the Easter break, it is elementary to say that in any fatal accident situation the vehicles should be examined by a vehicle testing inspector at least. In the circumstances of this case, with so many unanswered questions, they should also have been examined by a professional engineer.

Constable Hurley, however, took the view that the CRX was so fire damaged it would yield little information. This decision, it appears, was made without consultation with a vehicle testing inspector or an engineer.

The CRX was buried at the Invercargill tip about noon on 21 April 1995. This was three days after it was uplifted from the Police station. I have read the job sheet recording an interview with Mr Russell Lawton of Omega Services Limited who transported the vehicle. He records with some accuracy that the CRX was released to his firm by Police at 11am on 18 April 1985, and delivered to the panelbeater's yard at 11.53am. A cover was put over the vehicle. Later Mr Lawton learned that people, demonstrating a macabre interest in the wreck, were trying to photograph it and get souvenirs from it. Mr Lawton said as a result he spoke with Mr Thompson, the insurance assessor. He spoke to Winton Police who spoke to the family. The family said they never wanted to see the car again. However, they did not know it was to be buried. At 11.55am on 21 April the vehicle was taken to the tip and buried.

The fact that the CRX was buried was seen by some as possible evidence of a cover-up by simply getting rid of evidence. I am satisfied, however, that this was not the case. It is a sad commentary on human nature that some people exhibit a ghoulish interest in vehicles involved in fatal accidents. The fact is, however, that Police did not authorise the burial at the tip. Their mistake was to let the vehicle out of their control. This aspect could easily have been disposed of by once again locking the vehicle up out of sight of the general public.

What does amount to neglect of duty on the part of Police was to authorise the vehicle's release in the first place to the insurer without arranging an inspection by experts. By doing so the Police lost control of the destination of the vehicle, but this has already been dealt with.

On about June 1995 Mr Valentine, an engineer, did inspect the Honda Accord at the request of Police. This followed Mr Cairns' complaint and was made on the instructions of the officer investigating that complaint.

I am satisfied that one of the major deficiencies in the Police investigation was the failure to have a timely inspection made of the Accord and any inspection at all made of the CRX to analyse damage, particularly to form an opinion as to angle of collision. I have already said enough on this point.

This common ground of complaint, then, of failing to have the vehicle examined by experts is upheld by the Authority, as it was by the Assistant Commissioner.

Complaint 5

The fifth major and common complaint was that a request by Detective Sergeant Hewett and Detective Lee for an engineer's report was refused by Inspector O'Neill on 26 April 1995. This was the day Detective Lee considered the file and learned of Mr McLeay's very high blood alcohol level. Detective Sergeant Hewett, as has been stated earlier, was on annual leave from 12 to 25 April 1995 inclusive. On 26 April Detective Lee spoke to him about the file. She expressed her serious concerns regarding the file. These concerns are set out in a statement she made on 27 June 1995 and have already been referred to.

With this information wedded now to knowledge of the high alcohol level Detective Sergeant Hewett and Detective Lee approached Inspector O'Neill that day and asked for the assistance of an engineer to investigate the crash. Detective Sergeant Hewett, in a statement dated 23 June 1995 said:

"Because of the cost and the unavailability of one of the vehicles which had been buried at the tip, he declined this request. He was surprised the vehicles had not been examined at the time."

As I have noted earlier Detective Sergeant Hewett and Detective Lee were not happy with Inspector O'Neill's decision. Detective Lee said:

"I have seen the 20/20 programme and can assure that any dealings I had with the file and my knowledge of what occurred to me prior to obtaining the file that there was no 'cover-up' but that money was the motivation behind the failure to involve an engineer."

Inspector O'Neill, for his part, rejects the claim that money was a determinant factor in declining this request.

Inspector O'Neill was interviewed in the course of the most recent investigation. As I have related, Mr Fitzharris and Mr Robertson spoke to him in Invercargill for some three hours on 1 November 1996. On that occasion Inspector O'Neill said:

"Brian (Hewett) then raised about getting an engineer and I said 'What are we going to achieve the CRX is gone'. The Honda Accord had been released out of our custody and therefore we had no chain of

evidence. I then made the comment 'A reasonable defence counsel would laugh us out of Court if we produced evidence in this manner' and I then said I didn't see any point in getting that done. I also took into account the fact that a less than competent initial scene examination had been made. One of the cars was gone and another appeared to me to be irretrievable and therefore an engineer would have only part of the matters required for examination to come up with an account that would have been suitable in my eyes for evidential purposes."

He was then asked if the expense of getting an engineer played any part in the decision to decline. He said:

"No. As far as prosecution is concerned the Police have no restrictions on budget."

This statement, of course, is in direct conflict with the evidence of Detective Sergeant Hewett and Detective Lee. As Inspector O'Neill made the decision I accept his statement it was not made on the basis of budget restrictions.

In my assessment it is clear from the evidence Detective Sergeant Hewett and Detective Lee were very anxious indeed to obtain the services of an expert engineer for the reasons of concern voiced by Detective Lee and no doubt also because of contrary views held within the Police. The request I would regard as entirely proper and sensible and in fact even obvious given the circumstances prevailing at the time. That request was declined and the file given to Constable Piercy to review. He had recently completed a two-week Crash Investigators' Course.

I categorise the failure for whatever reasons to appoint an engineer in the circumstances existing on 26 April 1995 as serious and I agree that this ground of complaint should be upheld.

Complaint 6

A further common ground of complaint is that expressed by the families of all victims that they are extremely dissatisfied with inadequate communications they received from Police at Invercargill. Assistant Commissioner Fitzharris has upheld this complaint on the evidence and I agree with his conclusion.

The Winton Police (Constables Dunne and Burns) were in relatively frequent communication with the Hamilton and Horgan families. However, they did not have the investigative file and themselves had difficulty obtaining information about the crash investigation.

Constable Hurley spoke once to the Hamiltons to query their daughter's clothing. That was on the Sunday following the crash when Mr Hamilton said he was told there was no alcohol involved and that Megan Hamilton may have been at fault. I have already said this was most unwise. There was no contact with the Horgan or Armstrong families by inquiry staff. Putting aside the requirements of the Victims of Offences Act 1987 in a tragedy of this magnitude Police clearly have a duty to keep a grieving family advised of the progress of their investigations. They did not. There was a dramatic change when Detective Sergeant McCambridge took over the enquiry in February 1996. His continuing contact with the families has elicited commendation from all of them.

CONCLUSION

I have already stated the Coroner's Inquest conducted in December 1995 in which Mr C C O Marks supplied expert engineering evidence on the cause of the crash resulted in a finding of fault on the part of Mr McLeay by the Coroner. That finding caused the Police to re-examine the investigation that had led to the laying of the one charge of driving with excess alcohol in the blood and thereby failing to make any charge of fault on the driver's part in relation to the crash that caused the deaths. The internal re-investigation was supported by the allegations of incompetence and neglect contained in the written complaints that have already been referred to by me. In the result the Police were assisted by Mr Marks' professional opinion on causation and guided by the Crown Solicitor took steps to recover on their faulty first investigation and first prosecutorial decision and in March 1996 laid the manslaughter charges. From there on the issue was placed fully and fairly into the criminal justice system with the final disposal coming about in April 1997 when the Court of Appeal dismissed the appeals against conviction.

I think it is important for the complainants to know, and the general public, that whatever the faults and deficiencies of the Police in the first stages of this tragedy they were recovered and the case was dealt with in the Court system. It is also important to remind that my function is to examine basically Police conduct up to the laying of the manslaughter charges, and that I have no jurisdiction over the Court's disposal of the case.

It is obvious that the changed Police response and Court process have answered many of the deep concerns felt particularly by the parents of these three young women. However I nevertheless was obliged to make a thorough investigation of the cardinal failures, and for the sake of the future state the results of my findings. It is important that this report be read as a whole document but within the six specified complaints I have tried to face and make decisions on each complaint.

In summary the complaint numbered 1 by Mr Cairns of cover-up is not upheld. The gravamen of each of the separate complaints numbered 2-6 inclusive has been upheld by me as being valid. Moreover, I now call down earlier remarks made by me in this report that the second function of this investigation and report is a remedial one to ensure as far as possible fatal crashes are investigated with a completely revised approach on the part of Police. Already reform has begun within the Police administration with the publication of a new set of General Instructions on investigation of "Fatal/Potentially Fatal Crashes". I refer again to this under Recommendations.

DISCIPLINARY ACTION IN RESPECT OF POLICE INVOLVED

Disciplinary action is properly the prerogative of the Commissioner. The joint investigation and this report have assessed and evaluated the actions of individual officers. In his report to the Commissioner Assistant Commissioner Fitzharris has recommended disciplinary action in respect of five serving Police officers. Mr Fitzharris does not recommend any action in respect of Superintendent Cook, the District Commander, and with that I agree.

I will be content if this report is studied at Police National Headquarters and the Commissioner, together with his advisers, should then decide on what he considers is appropriate action taking an overall view of the whole matter.

RECOMMENDATIONS

The proper culmination of a joint enquiry as was conducted in this case should reveal concrete recommendations for the future. I have already stated Police administration have implemented some urgent reforms through General Instructions.

However, as some solace to the complainant families, and so the public can observe the determination of the Police to carry out reform, I reproduce the list of recommendations contained in Mr Fitzharris' 9 December 1996 report to the Commissioner. These recommendations arose out of the joint investigation and have my formal endorsement with this report, but are already before the Commissioner.

“RECOMMENDATIONS”

- 6.1** *Police have not elevated the investigation of fatal road crashes to the importance they deserve. There is an urgent need for Police to review and update its instructions and Manual of Best Practice on crash investigations. These instructions should include:*
- 6.1.1 *When Police refer to a collision on the roads, the term “crash” should be used. The term “accident” tends to minimise and mislead about what may be a serious criminal offence.*
 - 6.1.2 *Police should treat fatal traffic crashes in a similar manner to potentially suspicious deaths. There should be an early assessment whether the crash could result in criminal charges. If the initial analysis shows indications of criminal culpability then a team response with ownership and accountability for the file should be adopted.*
 - 6.1.3 *The investigation/scene attendance of serious/fatal crashes should be supervised by an NCO experienced in crash investigation.*
 - 6.1.4 *The investigation should be conducted under the supervision of the Officer in Charge CIU. This member will be responsible for the proper conduct of the investigation.*
 - 6.1.5 *Attendance at the scene should be directed to the gathering of evidence which can be used later by experts to establish crash reconstruction. Where necessary these experts will be called to the scene prior to it being cleaned up.*
 - 6.1.6 *Photographs of the scene and damaged vehicles should be taken, in situ, prior to the cleaning up. This should be a routine process in the scene attendance. The photographer should be briefed by the O/C Scene so as to have clear guidelines of what to photograph to assist the enquiry.*

- 6.1.7 *Specially trained officers should be available to attend the scene of each fatal/serious crash for evidence collection (except where this is impossible due to remoteness. In that case they should seek advice from specially trained staff.*
- 6.1.8 *Police should review current staff who are trained in crash investigation and implement further training if required. Each Region should have at least one member undergo tertiary training in crash reconstruction.*
- 6.1.9 *Automotive surveyors or scientists should be used in every case to investigate the condition of the vehicle(s).*
- 6.1.10 *In more complex crashes, engineers or crash reconstruction experts should be used.*
- 6.1.11 *To enable Police to carry out the appropriate inspection of motor vehicles involved in traffic crashes as set out in this report, it is necessary they be given a statutory power to seize vehicles for that purpose. It is recommended that Police make submission to Government for appropriate legislation.”*

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
9 May 1997