



**IPCA**

Independent Police Conduct Authority  
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17 May 2010

Keith Hunter  
PO Box 46 115  
Herne Bay  
AUCKLAND 1147

Dear Mr Hunter

#### COMPLAINT ABOUT OPERATION TAM

1. I write in response to your various complaints about Operation Tam, the Police investigation into the disappearance and murders of Ben Smart and Olivia Hope on 31 December 1997 in the Marlborough Sounds.

#### The Complaint

2. On 18 June 2007 you sent a letter of complaint to Deputy Commissioner Rob Pope, together with a copy of your book *Trial by Trickery*. In your capacity as author of the book you levelled a number of allegations against the Deputy Commissioner, arising from the manner in which he discharged his responsibilities as the officer in charge of Operation Tam.
3. At the time of Operation Tam, Deputy Commissioner Pope was a Detective Inspector based in the South Island. It is therefore convenient to refer to him as Detective Inspector Pope throughout this letter.
4. In accordance with the requirements of the Independent Police Conduct Authority Act 1988 (the Act) your letter of complaint was forwarded to the Authority by Police on 2 July 2007.
5. Subsequently, on 28 August 2007, you wrote directly to the Authority, referring to your book *Trial by Trickery* and also to a DVD of a documentary, both said to support your complaints.
6. The Authority advised you and the Commissioner of Police that it would investigate the matters set out in your letter of complaint, in your book and in the documentary. The Authority has now done so and I report to you on the outcome.

### **The Authority's Investigation**

7. Under its governing Act the Authority's role is to consider questions of Police conduct and neglect of duty, and matters relevant to Police policies, practice and procedure. The extent of the Authority's jurisdiction is thus circumscribed by its statutory limits, and it is important to emphasise that it is not open to the Authority to itself re-investigate a criminal investigation, or to re-litigate issues determined by due process in the Courts. Therefore, any matter that was determined at the trial of Scott Watson or during his subsequent appeal is not within my jurisdiction. It is however the Authority's role to examine and make findings about the adequacy or integrity of a Police investigation leading to a prosecution and to make recommendations about Police policies, practices and procedures.
8. In investigating your complaints the Authority has conducted an extensive, indeed exhaustive, review of Operation Tam, which is one of the largest Police files compiled in New Zealand's criminal history. That investigation has involved many hundreds of hours of input by experienced investigative staff and legal analysts. Some 25,000 documents have been examined in the process. I am satisfied that the investigation has been thorough and detailed and its findings are soundly based.
9. You raised with me the question of a report furnished by Ms Kristy McDonald QC following an inquiry into a petition by Scott Watson to the Governor-General pursuant to s.406 Crimes Act 1961. As I advised you earlier, a copy of Ms McDonald's report has not yet been made available to me and I am unaware of its terms of reference or contents. There is no interrelationship between her inquiry and mine.
10. I record that I have not interviewed or examined Scott Watson in the course of the Authority's investigation. I note that you have never met or spoken with Mr Watson either. Whilst he made a number of brief statements to Police early in the investigation he did not make a statement on arrest and nor did he give evidence at his trial. His election to remain silent, as is his right, means there is no version of events from him. It is however always helpful to hear from a person at the centre of accusations. While you might argue that the issues you point to are extrinsic to Mr Watson and are concerned with fairness and process, hearing from the person at the centre of a Police investigation, that is criticised for bias and inadequacy, could prove helpful in determining the integrity and adequacy of that investigation, particularly where the movements of the person, the timing of his movements and the reasons for his movements might benefit from explanation.
11. I record also that the Authority has not received any complaint from Mr Watson: the only complaints this office has received are those from yourself and two from his father.

### **Summary of Heads of Complaint & Findings**

12. As settled with you by Mr Grinstead, the Authority has considered ten heads of complaint raised by you. A summary of these and my findings in respect of each are set out below:-

- 12.1 **Photograph Identification** (Pages 6 – 10) you say that the Police team under the command of Detective Inspector Pope used inappropriate photograph identification techniques. In particular, you say the officers used poorly constructed photograph montages during the investigation, including by choosing and including a ‘trick’ photograph as an identification tool, knowing that it promoted an untrue impression of Scott Watson’s appearance (Scott Watson being the only person depicted in the montage with half closed eyes). You further say that Police acted inappropriately by showing prime witnesses a single photograph of Scott Watson in the early stages of the inquiry.
- 12.2 **Finding:** The construction of the montages, the methods used for presenting the montages to witnesses, and the showing of a single photograph to Guy Wallace were all highly undesirable practices, particularly given the critical importance of suspect identification in this case. Compounding these departures from best practice is the limited nature of any useful documentation about witness’ responses to the montages in the Police files examined by the Authority; and the absence of any information to indicate how decisions about the timing or construction of the montages were made or by who. There is no information about what instructions if any might have been given to the officer(s) who compiled the montages or to the officer who showed a single photograph to Mr Wallace. This dearth of information makes it difficult for the Authority to determine whether there was any deliberate misconduct on the part of any individual officers in the approach taken to the photographic identification. The Authority does however find the methods employed were highly undesirable and fell far short of best practice.
- 12.3 **The Mystery Ketch** (Pages 10 – 11) You allege that Detective Inspector Pope gave orders to cease searching for the ‘mystery ketch’ ‘within a week’ of taking command of the inquiry, and then informed the press and the public that the ketch did not exist, despite receiving numerous eyewitness accounts of it over an extended period of time. **Finding:** There is no evidence on which to conclude that Detective Inspector Pope and his team deliberately ignored relevant evidence about vessels or vessel sightings. On the contrary, it is apparent that Police went to considerable lengths to identify, locate and eliminate all vessels in the vicinity of Furneaux Lodge on the night Ben and Olivia disappeared, and their actions seem eminently reasonable in this regard.
- 12.4 **Tunnel Vision** (Pages 12 – 13) – You allege that Detective Inspector Pope formed the view within five days that Scott Watson was guilty of the murders and from that point he and his officers ignored any evidence or indication to the contrary. **Finding:** While there were some deficiencies in the inquiry, a close examination of the investigation files satisfies me that on the whole Operation Tam was conducted reasonably and rationally and that its leaders remained open-minded throughout.
- 12.5 **False Rumours** (Pages 13 – 19) – You allege that Detective Inspector Pope created and circulated false rumours about Scott Watson and then refused to comment on the rumours when questioned by the press. **Finding:** I can find no basis for this allegation. What is apparent is that a number of the so-called ‘rumours’ were circulated by the press themselves or by others, contrary to the urgings of Police. In other instances the information circulated was either true

or was based on beliefs that were not unreasonably held by Police. The provision of a 'suspect profile' of Scott Watson to a group of civilians by a member of the investigation team was however highly undesirable.

- 12.6 **The Strategic Lie** (Pages 19 – 22) – You allege that Detective Inspector Pope deliberately told the press and the public that Scott Watson was not a suspect, whilst at the same time telling journalists unofficially that Scott Watson was the prime suspect; his purpose being to create a situation where the press could identify, attack and malign Scott Watson without risking '*sub judice*' contempt of court proceedings.
- 12.7 **Finding:** Having examined Detective Inspector Pope's actions and his public comments I find them entirely consistent with the view that he was extremely concerned by media speculation and identification of Scott Watson, and that he sought to avoid any statements that might compromise the investigation or prejudice any subsequent trial. Importantly, there is no evidence of a 'strategic lie', or of a breach of the *sub judice* rule, or breach of the Police Manual of Best Practice in this regard. Detective Inspector Pope did not publicly name Scott Watson as a prime suspect. To have done so would have been not only inappropriate, but contrary to Police guidelines, and clearly prejudicial to Scott Watson's interests. There is no evidence of misconduct in Detective Inspector Pope's dealings with the media during Operation Tam.
- 12.8 **False Information in Sworn Affidavit** (Pages 22 – 27) – It is alleged that Detective Inspector Pope swore multiple false oaths in an affidavit filed in support of applications to obtain interception and search warrants. **Finding:** I find there are errors in the affidavit, which cause the document as a whole to fall short of the high standard of accuracy required in applications for warrants to search or intercept private communications. There is, however, no evidence that Detective Inspector Pope, or any other officer intended to mislead the Court; nor is there any evidence that when Detective Inspector Pope swore the affidavit he knew that any part of it was inaccurate. The errors do not strike at the heart of the affidavit; nor render its central purpose false. Singly or cumulatively, they do not constitute misconduct or neglect of duty by Detective Inspector Pope or any other person responsible for compiling the affidavit.
- 12.9 **Secret Witnesses** (Pages 27 – 30) – It is alleged that Detective Inspector Pope 'bought' the testimony of two prison inmate 'secret witnesses' by offering them favourable treatment in return for giving false evidence that Scott Watson had confessed to them in prison. **Finding:** Contrary to what has been suggested, there is no evidence that Police acted unlawfully or improperly in their interaction with either secret witness prior to, during, or after they gave evidence at Scott Watson's trial. The use of 'secret witnesses' is always fraught with obvious risk but those risks are usually exorcised through challenge at any subsequent trial, as was the case here.
- 12.10 **Coercion of witness** – (Pages 30 – 33) – You say that Detective Inspector Pope coerced a witness (Mr. Erie), who had been found by Police to have 250 cannabis plants, into giving false evidence, by threatening his access to his children and promising him that he would be charged only with cultivation of cannabis if he complied. Further, that Detective Inspector Pope approved for publication a report that Mr Erie had been charged with possession for supply

as a 'cover-up'. Finding: I find no evidence to support these allegations and am satisfied Police acted professionally and appropriately in all respects in terms of their dealings with Mr Erie.

12.11 **Blade Duration Test** – (Page 33) – It is said that Detective Inspector Pope did not test the duration of a voyage by *Blade* from Cook Strait to Erie Bay because he knew it would contradict any case against Scott Watson. Police were not obliged to carry out a reconstruction and there is no basis for the criticism of the failure to do so given the very limited evidential weight any such test would have had. Indeed, it is highly unlikely the reconstruction postulated in this case would have been admissible in evidence. This is because of the impossibility of replicating the wind conditions, tide and weather on New Year's Day 1988. In assessing the relevance and probative value of reconstruction evidence, a court must consider e.g. whether the evidence is able to accurately replicate the conditions in the case: *R v Kingi* (HC) Palmerston North, CRI-2005-054-305, 17 February 2006, Wild J); and whether the evidence effectively recreates an entire event or series of events: *Stratford v MOT* [1992] 1 NZLR 486.

12.12 **DNA Contamination** – (Pages 33 – 34) – It is alleged that possible contamination of evidence occurred either by hairs recovered from a 'Tiger' blanket seized from Scott Watson's boat, *Blade*, and identified as belonging to Olivia, having been 'planted'; or that poor Police practices resulted in accidental cross-contamination. Finding: I find no evidence that police deliberately contaminated the evidence by placing Olivia's hairs on the blanket, either while the blanket and sample hairs were within the custody of Police, or once the exhibits had been sent to the laboratory. Nor is there any evidence of accidental contamination or 'secondary transfer' of this evidence.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

## Substantive discussion of each head of complaint and findings

### 1. Photograph Identification

13. You assert failures on the part of Police, and Detective Inspector Pope, in the photographic identification techniques used. In particular, you say that Police used poorly constructed photograph montages during the investigation, including by choosing a 'trick' photograph as an identification tool, knowing that it promoted an untrue impression of Scott Watson's appearance (Scott Watson being the only one in the montage with half closed eyes). You also suggest that Police acted inappropriately by showing prime witnesses a single photograph of Scott Watson in the early stages of the inquiry.

#### *The Photograph Montages*

14. The Police constructed three photograph montages (known as A1, A2 and B). Each montage comprised eight photographs of different men. The montages were shown to witnesses who had been at Furneaux Lodge on the night Ben and Olivia disappeared.
15. Montages A1 and A2 were produced in order to determine the identity of a man who had been described as behaving in a 'sleazy' manner at Furneaux Lodge that evening. Montage B appears to have been used in an attempt to determine the identity of the man last seen with Ben and Olivia.
16. In relation to the montages:-
- In A1 and A2, Scott Watson was the only subject with visible tattoos. Some of the witnesses who were shown these montages had already said the 'sleazy man' had tattoos;
  - In A1 and A2, all subjects were photographed against an identical background at Blenheim Police Station;
  - In A1, A2 and B, all subjects had short to medium length hair. This is consistent with descriptions of the 'sleazy man', and also with the initial description given by Guy Wallace of the man last seen with Ben and Olivia, but inconsistent with identikit of the 'mystery man' (Guy Wallace's descriptions are further addressed below);
  - In A1, A2 and B, Scott Watson was the only subject who had been present at Furneaux Lodge that evening; and
  - Montage B uses a photograph of Scott Watson which you suggest shows his eyes half-closed, while other subjects have their eyes open.

See footnote 1 for breakdown of information relating to montages<sup>1</sup>

17. Montages A1 and A2 were identical except that the photograph of Scott Watson was changed from one taken on 8 January 1998 to one taken on 12 January 1998. The montages were shown to more than 40 witnesses during February 1998. Eight witnesses identified Scott Watson as the 'sleazy man'. Of these eight witnesses, five had previously described the 'sleazy man' to Police as having tattoos and wearing jeans (as he did in the montages).
18. Montage B was produced on 20 February 1998. Police documents describe a decision (but without identifying the decision maker) on 3 March 1998 to 'make up a better montage using a more accurate photo of WATSON'. Montage B was shown to witnesses in March and April 1998. This was after Scott Watson had been identified in the media following circulation of a suspect profile of him (see below); and after the key witness Guy Wallace had been asked to identify Scott Watson from a single photograph (see below); and by television reporters from a video. Montage B resulted in either definite or tentative identification by some additional witnesses.
19. There are some inconsistencies in Police records in relation to the montages. In particular, there is conflicting evidence as to whether Guy Wallace was shown one or two montages.
20. There are also no clear records of what witnesses were asked or told when they were shown the montages. Two witnesses indicate they were told to ignore hair length when viewing the montages. It is impossible to determine whether any of the witnesses were given any other directions.
21. In 1997 the Police Manual of Best Practice (Manual) provided that:-
  - Witnesses should be shown at least eight photographs;
  - Witnesses should be given no names or other indications of identity, and should not be helped or consulted;
  - The subjects in the photographs must all be of similar appearance; and
  - After the witnesses have been shown the photographs, Police should prepare a written report setting out, among other things, the details the witnesses used in making any positive identification.
22. The Manual also provided that, if possible, suspects should be identified using identification parades. Scott Watson was not asked to take part in an identification parade until 24 February 1998. That request was refused on the grounds that he had already been identified by the media and because

<sup>1</sup> **Montage A**

- Police Analyst documents record that 43 witnesses were shown either montage A1 or A2. 21 witnesses were shown montage A1 (containing the photograph of Watson taken on 08/01/98). 19 witnesses were shown montage A2 (containing the head to thigh shot of Watson taken on 12/01/98).
- It is not clear from the Police file whether witnesses who were shown montage A1 were also shown montage A2 because the Job sheets do not specify which version of the montage they were shown.
- Only 8 of the total 43 witnesses that were shown either montage A1 or A2 positively identified Watson as being the "sleazy man".

**Montage B**

- 53 witnesses were shown montage B which contained the photograph of Watson with his eyes half closed. 27 of the witnesses shown montage B positively identified Watson as the man they had described.

**Total Montage Evidence**

- In total 94 people are recorded as being shown either montage A1, A2 or B by Police, of these individuals (none of whom previously knew Watson) 35 positively identified Watson and gave evidence of this at the trial. It appears that two individuals were shown both montage A and Montage B.

photographs of him had already been circulated in the Blenheim area through the suspect profile (see below).

23. Ben and Olivia disappeared at night, after a New Year's Eve event at which a very large number of people were present and during which many of the witnesses had consumed alcohol. Given these circumstances, identification was always going to be a difficult and critical issue for investigators and for any subsequent trial, and a high standard should have been the norm throughout.
24. Photograph montages are a legitimate identification tool in some circumstances. In the Authority's view, however, the composition of montages A1, A2 and B fell well short of best practice. The use of the 'hooded eye' photograph (as you have described it), the choice of a photograph where Scott Watson had visible tattoos when no other subjects had visible tattoos, and the fact that Scott Watson was the only person in the montages who was present at Furneaux Lodge that evening, are all factors with an inherent potential to influence witnesses.
25. The manner in which that identification evidence was obtained was subsequently the subject of strong challenge by Scott Watson's defence team, both at trial and on appeal. Certainly that was so in respect of Guy Wallace's identification of Scott Watson. At trial the Judge gave a clear warning to the jury as required by s 344D of the Crimes Act 1961 (then the applicable provision: now contained in the Evidence Act 2006). The judge told the jury that he was directed by law to warn them of the special need for caution before they could convict an accused person in reliance on evidence of identification. On appeal, the Court of Appeal found the form of the direction the Judge gave did not disadvantage the defence and held, rejecting the argument advanced on appeal for Scott Watson, that it was incumbent on the trial judge to have directed the jury as he had, and that he had done so in accordance with s 344D of the Crimes Act. The direction was essentially a 'copybook' direction.
26. The standard for visual identification has since been formalised in the Evidence Act 2006. The Evidence Act requires visual identification to be carried out as soon as practicable after an alleged offence is reported but does not establish a preference for identification parades over other formal procedures, such as photograph montages. The Evidence Act provides that a witness may not be given any indication as to who is to be identified, and indeed must be informed that the person to be identified may or may not appear in the montage. Written and pictorial records of the identification must be prepared and certified as true and accurate.
27. **Finding:** The construction of the montages, the methods used for presenting the montages to witnesses, and the limited documentation around witness responses, were all highly undesirable, particularly given the importance of suspect identification in this case. Whilst an exhaustive examination of Police records does not reveal any deliberate intention or conscious plan on the part of Police to influence witnesses inappropriately, nor provide tangible evidence of serious misconduct, the various failures to adhere to common law principle and to the guidance in the Police Manual of Best Practice has exposed the integrity of the investigation to justifiable criticism and to the drawing of inferences about intention and motivation. It also rendered any evidence



obtained vulnerable to challenge, as subsequently occurred at both the trial and on appeal.

### *The Single Photograph*

28. Guy Wallace said in an interview with Police in January 1998 that he had been shown a black-and-white photograph of Scott Watson at a Police station as he was preparing the compusketch picture of the 'mystery man'.
29. Guy Wallace said he was shown the photograph in a corridor outside the room where he was providing the description for the compusketch. He was recorded as saying that the officer who showed him the photograph 'just asked if I knew this guy and I said I didn't'. The officer also 'said that the photo is about four to five years old and he could have changed – but I still didn't know him'.
30. A Police document of 7 January 1998 records an intention to show a photo of Scott Watson in order to 'confirm or eliminate from inquiry', and subsequent Police records indicate that Guy Wallace was shown the photograph. There is, however, no transcript or other formal record of the interaction, and it is not known which officer was responsible.
31. Police records also confirm that a single photograph of Scott Watson was shown to other key witnesses in early January 1998. Of those shown the photograph, three identified him as the 'sleazy man' who had been at Furneaux Lodge.
32. Showing a single photograph to a potential witness was not recommended practice for identifying offenders at the time of the inquiry and did not comply with the Manual as described at paragraph 21 above. The probative value of identification evidence obtained by way of a single photograph was described by the Court of Appeal in *R v Russell* [1977] 2 NZLR 20 (at page 27 per Richmond P) as being 'positively dangerous or unsafe' in the hypothetical situation where a single photograph of an accused is shown to a witness at a time when the Police are in a position to charge the accused with an offence and are about to hold an identification parade. See also the comments of the Court of Appeal in *R v Ormsby* [1985] 1 NZLR 311, *R v Ruscoe* (1997) 14 CRNZ 669 and *R v Tamihere* [1991] 1 NZLR 195 where Cooke P described the dangers associated with identification from a single photograph and the 'displacement effect'. At page 197 Cooke P observed:-

'A danger in a witness identifying the accused on being shown a single photograph, or on seeing him in a situation where it is plain that he is the suspect or the person charged, is that the witness may tend, perhaps subconsciously, to think that the accused must indeed be the person implicated in the crime whom he saw at the material time. A mere general resemblance may then convince the witness of the correctness of his or her identification. Yet, if invited to select one from a group of persons of somewhat similar appearance or in a situation where there is nothing to point to a particular individual as being the person thought by the police to have committed the crime, the witness may not be able to make an identification or may prove to be mistaken. The single photograph, or a realisation that the person now observed is suspected of or charged with having committed the crime, may create a displacement effect in the mind of the witness.'

33. **Finding:** In the light of these factors and well-established legal principles in place at the time, the Police's actions in showing a single photograph to Guy Wallace were highly undesirable. Again, whilst there is no direct evidence of any intention on the part of Police to influence witnesses inappropriately, the comments I have made in paragraph 27 above equally apply here. As I have noted, the standards and principles guiding identification of suspects from photographs were formalised in 1998. In particular, s 45(3)(b) of the Evidence Act now requires certain minimum standards for identification evidence, including the requirement for photograph montages to include no fewer than seven photographs of individuals other than the suspect.

## 2. The Mystery Ketch

34. It is suggested that Detective Inspector Pope gave orders to cease searching for the 'mystery ketch' 'within a week' of taking command of the inquiry, and that he then informed the press and the public that the ketch did not exist despite receiving numerous eyewitness accounts of it over an extended period of time.
35. In support of this complaint, and with your knowledge, the Authority has received material from Maritime Research Group (NZ) identifying people who are reported to have called Police with ketch sightings and claim to have been told that Police were no longer interested.
36. Mr Wallace's second statement on 6 Jan 98 refers to a ketch and its particular characteristics. It became the 'mystery ketch' as Police could not locate/find a boat matching its description.
37. In considering this aspect of your complaint, the Authority's investigators have examined every witness statement recorded by Police, Police internal briefing papers, Police media releases, and every Police job sheet in relation to ketch sightings, along with every statement that was made to Police by witnesses identified by you and by Maritime Research Group (NZ).
38. It is evident from the material reviewed that Police did not exhibit any clear preference for information about a sloop, over and above a ketch, before 27 January 1998.
39. At a briefing on 10 January 1998, officers involved in investigating the vessels at Endeavour Inlet expressed the view that there was a 'high probability' that the ketch did not exist. The officers had by that date identified 73 of the 96 vessels reported to be at Furneaux Lodge on New Year's Eve. No witness had reported seeing a vessel fitting the ketch described by Guy Wallace.<sup>2</sup>
40. On 11 January 1998 a detective interviewing Guy Wallace told him that no other witnesses had seen a ketch matching the description he had provided. The officer accused him of lying or being mistaken about the vessel. After the interview Police recorded that Guy Wallace accepted he might be mistaken.

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<sup>2</sup> The final figures of all boats identified were 176 boats in the vicinity and 105 in the immediate vicinity of the Lodge: see R v Scott Watson (CA 384/99 and 507/990); [2003] NZAR 193, paragraph 3

41. On 14 January 1998 Police issued a media statement saying they had been unable to locate anyone who verified the existence of a ketch, and appealing for sightings of Scott Watson's sloop. They also said they 'were not discounting information about a ketch'.
42. On 27 January 1998 Police stopped appealing for sightings of a ketch. Detective Inspector Pope was quoted in media reports as saying he remained open-minded about a ketch but was focusing the inquiry on the sloop and on vessels known to be in the inlet at the time Ben and Olivia disappeared.
43. On 3 March 1998 Detective Inspector Pope was quoted in the media as saying he believed the ketch did not exist. By that stage, Police believed they had accounted for all vessels arriving and leaving the area where Ben and Olivia were last seen, and all people who were on those vessels. Police had also spoken to people who were on shore or on vessels near where the ketch was supposedly berthed, and no one had seen it. While there were some ketches near Furneaux Lodge during the New Year period, Detective Inspector Pope said they had been identified and eliminated from Police enquiries.
44. Despite mounting evidence against the existence of a ketch, Detective Inspector Pope did not give any order that ketch sightings were not to be recorded. Police continued to record and follow up ketch sightings throughout January and February, and indeed for a considerable period after that. Altogether, Police recorded and followed up many hundreds of possible ketch sightings (as well as a large number of sloop sightings).
45. The Authority's investigation has revealed that some reported sightings were either not investigated, or if they were investigated, Police's actions were not adequately recorded. Some reported sightings were not actioned or followed up by Police for days, and in some cases, for weeks. In a number of cases witnesses who had reported a sighting were not informed of the results of the Police investigation. Police records reveal that some reported sightings were not followed up because Police had already taken statements from other witnesses who had reported the same sighting.
46. The fact Police did not report back to every witness who called with a sighting may have left some with the impression that their calls had not been followed up. Given the volume of calls Police were taking, however, this is understandable and is not indicative of any failure to follow up on positive leads.
47. It is plain that Police went to considerable lengths to identify, locate and eliminate all vessels in the vicinity of Furneaux Lodge on the night Ben and Olivia disappeared. Whilst a small number of reported sightings elsewhere were not followed up, and there are some gaps in record-keeping, the scale and demands of this inquiry have to be borne in mind and the Police actions were reasonable. There is no evidence of Detective Inspector Pope or his team deliberately ignoring relevant evidence.
48. Finally, I record that Maritime Research Group (NZ) and you have recorded some possible sightings that have not been reported to the Police. Under the Act, the Authority has no mandate or jurisdiction to investigate this information. I understand that information about these possible sightings have been provided to the Police for assessment and possible further investigation.

### 3. Tunnel Vision

49. It is said that Detective Inspector Pope formed the view within five days that Scott Watson was guilty of murder and that he conducted the inquiry in such a manner that his officers henceforth ignored any evidence or indication to the contrary.
50. It is correct that Police formed an early impression that Scott Watson was a probable suspect. This view was based, among other things, on inconsistencies between Scott Watson's initial statements, photographic evidence, evidence from witnesses at Furneaux Lodge about Scott Watson, and on the change in appearance of his sloop *Blade* after New Year. A warrant to search *Blade* was sought on 8 January 1998 and the vessel was seized. It was searched four days later.
51. One line of inquiry pursued by Police concerned Scott Watson and his movements and was logical, given the matters set out in paragraph 49 above. Other separate lines of inquiry were also conducted, including consideration of a broader suspect list, Ben and Olivia's movements, the vessels present at Furneaux Lodge at the time Ben and Olivia disappeared and the movements of those vessels. Police also focused on the identification of the man Ben and Olivia were last seen with and identification of the vessel they were seen boarding.
52. Although Scott Watson was regarded from an early stage as the strongest suspect, he was not the only suspect. In all, during the course of the investigation more than 100 suspects were identified and eliminated. Internal Police documents indicate that in late January 1998 some 46 suspects still remained. By 11 February 1998 that number had been reduced to 29. Of the more than 100 suspects initially considered, some were eliminated quickly, while others required considerable follow-up.
53. Internal Police documents confirm that despite growing evidence pointing to Scott Watson, Detective Inspector Pope remained open-minded to all possibilities.
54. On 23 January 1998 an internal update to Police National Headquarters described Scott Watson as the strongest of 46 suspects, "*without excluding the possibility of other offenders*". The document sets out the evidence against Scott Watson at that stage and also describes Police efforts in other lines of inquiry.
55. On 11 February 1998, approximately a month after Detective Inspector Pope took over the inquiry, a Police document recorded that it remained to be established "*whether any other person or persons has any physical link*" to Ben and Olivia's disappearance.
56. It was not until mid-March 1998 that Detective Inspector Pope referred internally to having a prime suspect; not until late April 1998 that he sought legal advice as to whether there was a sufficient evidential basis for Mr Watson to be charged; and not until May 1998 before he was prepared to confirm publicly that Operation Tam had been elevated from a missing persons inquiry to a homicide investigation. These decisions were made after

Police had received forensic evidence which they believed demonstrated a cogent link between Scott Watson and the disappearances.

57. At the time this was the largest investigation file ever compiled during a criminal investigation by New Zealand Police. Approximately 1650 people who were in the Marlborough Sounds at the time had to be traced and contacted. More than 100 vessels were identified and traced. On the basis of what Detective Inspector Pope knew, it was reasonable and appropriate for him to focus resources on investigating Scott Watson: indeed, he would have been remiss had he not.
58. **Finding:** Police continued to investigate other suspects and take reasonable steps to determine whether they were relevant to the inquiry. Police also continued to investigate the mystery ketch as described by Guy Wallace, and to gather evidence from all witnesses who could be located. This involved interviews conducted by members of the Operation Tam inquiry team where possible and reliance on Police investigators located in other parts of New Zealand where necessary. All information collected and obtained was eventually sent to the inquiry team in Blenheim for assessment. Although there were some deficiencies in the inquiry, as outlined elsewhere in this letter, I am satisfied that on the whole Operation Tam was conducted in a reasonable manner and that its leaders remained open-minded throughout.

#### 4. False Rumours

59. It is said Detective Inspector Pope created and circulated false rumours about Scott Watson and then refused to comment on the rumours when questioned by the press.
60. Specifically it is alleged that:-
- Police circulated a 'suspect profile' of Scott Watson to identify him as the Police's suspect, to defame him and to create widespread public antipathy towards him;
  - Police circulated false rumours concerning Scott Watson's criminal record, character and family;
  - Police changed the description of the 'mystery man' to fit Scott Watson;
  - Police accused Scott Watson of changing his appearance after New Year's Day;
  - Police circulated a rumour that Scott Watson was involved in an assault at Furneaux Lodge on New Year's Eve; and
  - Police circulated a false rumour that Scott Watson and Guy Wallace were friends.
61. I consider each aspect in turn.

*Suspect Profile of Scott Watson*

62. It is suggested in *Trial by Trickery* that Detective Inspector Pope ordered a 'suspect profile' of Scott Watson to be created and distributed amongst Ben and Olivia's families and amongst large groups of searchers. It is said that this was to identify and confirm Scott Watson as the Police's suspect, to defame him and to create widespread public antipathy towards him.
63. Police did prepare a 'suspect profile' of Scott Watson. This was one of more than 50 suspect profiles produced at the time. The profile contained sensitive information about Scott Watson. It named him as the owner of *Blade*, it detailed his past criminal convictions and described his character as being that of a 'loner'. He was also described as having 'a chip on his shoulder, hates the world, surly, explosive temper, lacks social skills, smokes cannabis. Known to climb onto other boats at night people on them or not.'
64. This suspect profile was provided by a Police officer to six members of a civilian search team in early March 1998. Although they were supposed to return the profiles after the search, some of those copies subsequently found their way to members of Ben's and Olivia's families, to Scott Watson's family, and to the media. I note that the press responsibly chose not to publish or broadcast the profile's contents.
65. Detective Inspector Pope explained to the press that the profile was one of more than 50 Police had prepared for a variety of suspects, that he was disappointed that a single profile (Scott Watson's) had been circulated, that its circulation was unhelpful and could be detrimental to the inquiry, and that it was "absolutely incorrect that we are focusing on one person and one person only". He also said that "as we gain information and speak to witnesses, someone who may be a suspect one day may be eliminated the next".
66. Initially, Operation Tam's lead investigators believed Scott Watson's profile had been given to the civilian searchers in error, and that a suspect yacht profile should instead have been provided to searchers. A Police officer subsequently admitted responsibility for providing the profile to searchers, to provide details of the clothing worn by Scott Watson, as well as that of Ben and Olivia. The officer did this apparently in response to pressure from Olivia's family.
67. **Finding:** Although profiles were prepared for other suspects, the Authority has been unable to locate any other profiles similar to the one prepared for Scott Watson. The Scott Watson profile contained significant information that had the potential to influence witnesses, with consequences for any subsequent trial. It should not have been released into the civilian arena, and this has been acknowledged by Police. The release was both careless and highly undesirable and the officer concerned has admitted responsibility for its release. There is, however, no evidence to establish that the profile was produced and distributed in this manner on Detective Inspector Pope's instruction or with his knowledge; or that it was produced for the specific purpose of circulating false rumours about Scott Watson.

*Rumours about Scott Watson's Criminal Record, Character and Family*

68. It is said Police spread false rumours that Scott Watson had a long criminal record and was violent. Some of these rumours are repeated in the affidavit sworn by Detective Inspector Pope in January 1998 (which is addressed further below). It is also alleged that Police spread false rumours about a relationship between Scott Watson and his sister, and about Scott Watson's family (in particular, that the family was to be feared).
69. Police did gather information about Scott Watson's criminal record, which included convictions for assault and possession of an offensive weapon. Police also sought information about Scott Watson's character, whether he was capable of violence, and whether he took drugs. These were legitimate lines of inquiry and to be expected of Police.
70. Police documents record that Scott Watson was known to Picton Police. The investigation recorded incidents in which Scott Watson had bought and used knives, had threatened others, was a significant drug user, was described as a loner, and had lost his temper and threatened violence.
71. Police made enquiries about Scott Watson's relationship with his sister, due to the reported closeness between the pair. This would seem to have been a legitimate line of inquiry.
72. Operation Tam was conducted in a small community in which many people knew each other and discussed the case openly. This included members of the Watson family, members of Ben's and Olivia's families, and other people who were interviewed as part of the inquiry. The inquiry also took place in an environment of intense, and probably unprecedented, media scrutiny. Witnesses, and those who knew Scott Watson, were also frequently interviewed by the media.
73. In these circumstances, information about Police lines of questioning quickly spread throughout the community and often reached the media. While Police refused to reveal the identity of the sloop owner, would not confirm that the Watsons' property had been searched, and would not confirm that Scott Watson's drug use was being investigated, members of the community were less circumspect, freely discussing these and other matters with each other and the media. That is to be expected in a community in which a dramatic event has occurred and which is also the subject of intense media and national attention.
74. **Finding:** There is no evidence of Police deliberately or systematically circulating rumours so as to prejudice the community against Scott Watson. There is, however, considerable evidence that the media reported statements from witnesses and others in the community identifying Scott Watson and discussing lines of inquiry, despite repeated Police pleas for media to abstain from doing so. The unprecedented and unrelenting nature of the media focus throughout the inquiry can only have served to make an already complex and difficult investigation even more so.

*Description of the 'Mystery Man'*

75. It has been suggested that Police changed the description of the 'mystery man' to fit Scott Watson.

76. On 3 January 1998 in his initial statement to Police, Guy Wallace said:-

"The guy on this ketch would have been about 32, about 5'9" tall, wiry build. He was unshaven but didn't have a moustache. He had short dark wavy hair and smelled like a bottle of Bourbon."

77. On 5 January 1998, in another statement to Police, Guy Wallace said:-

"The guy that got on board with Olivia and Ben was a male, Caucasian, aged about 32 years. He was about 5'8" tall, wiry build. I think he may have had tattoos on his arms but I can't be sure. His hair was a brownie colour, wavy and medium length. He had about two days' growth on his face. He was bourboned up, like his eyes weren't focussing."

"He was wearing a Levi shirt with short sleeves, 100 per cent cotton. It had a collar with a button-up front. I saw the Levi brand on it. It was a short sleeved shirt and the colour was between khaki and very pale green. He was wearing blue jeans and I think sandals."

78. Two other passengers were on the naiaid when the 'mystery man' was dropped off with Ben and Olivia. One, Ms Dyer, did not look at the 'mystery man'. The only description she could provide was that "by the sound of his voice he wasn't an old man or really young".

79. The other passenger, Mr Morresey, stated on 7 January 1998:

"I can only remember seeing the back of the guy that I thought was the owner of the boat. I'm not sure of his race. I would put his age at between 25 and 35 yrs. His hair was quite scraggly looking. By that I mean it was quite wavy. It went down to just before his shoulder line. I think it was brownish in colour. He had long pants on and I think he had a long sleeve shirt on but I can't remember anything about it."

80. On 8 January 1998, Mr Morresey stated:-

"I think that the guy who had been walking in front of us had longish hair. By this I mean it looked like it needed a bit of a cut. It was wavy and sort of shoulder-length. This is the guy that got on to the second yacht."

81. Police subsequently released compusketch pictures of the 'mystery man'. In public statements they continued to refer to a man fitting Scott Watson's initial description. For example, the *Waikato Times* reported on 10 January 1998:-

"The man seen on the ketch is described as being aged 32, 1.78m tall, with brown medium-length wavy hair, of a medium wiry build and with tattoos, possibly on his arms. His build indicated he worked in a physical job. He was wearing a medium-green Levi short-sleeved shirt with two breast pockets, the left of which had a red tab on it. He wore blue jeans and possibly training shoes. He was unshaven and appeared to have been drinking."

82. **Finding:** There is no evidence of a 'change' in description of the 'mystery man'. Rather, it appears Police relied on the initial description they received from Guy Wallace of the man last seen with Ben and Olivia.



*Scott Watson changing his appearance*

83. It is suggested that Police spread a rumour that Scott Watson had cut his hair to avoid identification as the 'mystery man'. Detective Inspector Pope made this allegation in his sworn affidavit. The concerns raised in connection with Detective Inspector Pope's affidavit are addressed below, Suffice to say, for present purposes, that there is no evidence of Police deliberately spreading such a rumour.

*Alleged assault at Furneaux Lodge involving Scott Watson*

84. It is suggested Police circulated a rumour that Scott Watson was involved in an assault on New Year's Eve. Specifically, it is said Detective Inspector Pope created a rumour that Scott Watson had assaulted a woman in what became known as the 'dive shed incident' at Furneaux Lodge, despite knowing this to be untrue.
85. On 11 January 1998 a security guard, Mr Cowan, who was working at Furneaux Lodge on New Year's Eve, made a statement to Police. He described seeing a man while he was working at the Lodge, who was similar to the man described by Police in the newspaper.
86. Mr Cowan described seeing the man beside the juke box in the Furneaux Lodge bar. He said the man was in his mid thirties, just over six feet tall, of strong build, fit and muscular, with tattoos on his forearms and chest. The man was said to have black hair that was straight and short on the sides, he was not clean shaven but did not have a beard. Mr Cowan described the man as wearing a white polo shirt with short sleeves down to his elbows, and said that the man:-
- "..looked quite tidy and didn't really look like the guy in the compusketch picture. This guy had shorter hair than that and you could see his ears."
87. Mr Cowan said he and another guard, Mr Doolan, had seen the man down by the jetty with a girl who was aged about 16-18. "She was crying and he had been talking to her. I am sure he had upset her." Mr Cowan said he and Mr Doolan had asked the girl if she was all right, and she had said that she was. The guards then left the pair.
88. On 11 February 1998 Mr Cowan identified Scott Watson, based on a photograph montage, as a man he had seen about ten times on New Year's Eve. He said the man had been involved in hassling girls in the bar and had approached him on several occasions throughout the night to tell him (Mr Cowan) that he knew martial arts, had a boat and was a keen fisherman.
89. Mr Cowan also said he and another guard had seen the same man:-
- "..with a girl between the toilets at the diving shed. The girl was visibly upset and crying... I heard the girl accusing the guy of hitting her. She said, "why did you hit me" or similar to that."
90. Mr Cowan said he and Mr Doolan asked the woman if she was alright, then left the pair. In his statement of 11 January, Mr Cowan described the man as wearing blue jeans, a white polo shirt with a navy blue stripe around the collar,

and "big black chunky boots", and that he "may have had a day or two's growth on his face".

91. On 12 February 198 the second security guard, Mr Doolan, described a man drinking rum and hassling others on Furneaux Lodge jetty. Mr Doolan described the man as follows:-

"Caucasian, 28 yrs, short dark hair, medium-skinny build, tanned skin. I think he had a blue short sleeved shirt on but I'm not sure."

92. Mr Doolan identified the man from a photo montage as Scott Watson, but said he was more unshaven on New Year's Eve than in the montage and had one to two days' stubble.

93. On 3 March 1998 Detective Inspector Pope issued a media statement calling for the woman involved in the incident to come forward. In a written statement, he provided a description of the woman, and also said:-

"The inquiry is also interested in identifying a man in his mid twenties who was on or near the Furneaux jetty between 3.30am - 4am. He had dark hair, was unshaven, and was wearing dark blue denim jeans, tan leather boots, and a blue denim shirt over a white T-shirt. His sleeves were rolled up, exposing tattooing on both his forearms. They were blue/green outline tattoos."

"He has been identified as the man who assaulted the woman about 2am at the diving shed.

"Detective Inspector POPE says, "We also believe he is the same person as the 'mystery man' who was in the naiaid carrying Ben and Olivia after they were uplifted from the Tamarack after 4am"."

94. The statement did not name Scott Watson. Nor did it contain any reference to Scott Watson's sloop, *Blade*, which might have identified him.

95. On the same date the *Marlborough Express* newspaper reported:-

"When asked if he believed this man was responsible for the Blenheim friends' disappearance, Mr Pope would not comment. 'I can't be drawn on that; we have yet to establish what has happened to Ben and Olivia,' he said. However, Mr Pope did say after weeks of interviewing and consolidating information, they were now close to identifying the man who has always been referred to as 'mystery sailor'.

96. In a further press statement on 4 March 1998 Detective Inspector Pope said that the assault was being made public at that time:-

"...because Police were only now confident that it had happened. The information was gleaned from many witnesses and hundreds of interviews which we've had to piece together very slowly and we feel comfortable that the descriptions and the events are as factually correct as we believe them to be."

97. The Police were justified in appealing for the woman involved in the dive shed incident to come forward. Indeed, they would have been remiss had they not.

98. The description provided in the media statement of the man on the jetty matched that provided by Mr Doolan in most respects, except that Mr Doolan was not sure what trousers the man was wearing. This information may have come from other witnesses. The description provided by Mr Doolan was consistent with the initial description provided by Mr Wallace of the 'mystery man' on 5 January 1998 in most respects, except for shirt colour (see