

David Wood  
Supp

INDEX

Judgment of Mallon J. – Lincoln v New Zealand Police

Finding of Coroner, David Crerar – Molenaar & Snee

ESR Reports – Aramoana

Arms Act 1983.

Police Press report 3/9/10.

**IN THE HIGH COURT OF NEW ZEALAND  
PALMERSTON NORTH REGISTRY**

**CIV-2009-454-473**

BETWEEN                      RICHARD LINCOLN  
   Applicant  
  
AND                                NEW ZEALAND POLICE  
   Respondent

Hearing:            22 October 2009

Appearances: Mr Lincoln appears in person  
                         Mr Powell for the respondent

Judgment:        1 March 2010 at 3.00 pm

---

**JUDGMENT OF MALLON J**

---

**Contents**

Introduction.....	[1]
The legislation.....	[4]
History of legislative provisions.....	[4]
The legislative provisions.....	[17]
The review by the police.....	[20]
Nature of proceeding.....	[32]
Meaning of “military pattern free-standing pistol grip” .....	[36]
Overview of the parties’ respective positions.....	[36]
Pistol grip.....	[43]
Free-standing .....	[49]
Military pattern.....	[71]
Overall assessment of meaning of “military pattern free-standing pistol grip”.....	[90]
Result .....	[99]

## **Introduction**

[1] The issue before me is the meaning of “military pattern free-standing pistol grip” as used in the Arms Act 1983. The issue arises because there are particular restrictions under that Act that apply to importing or possessing military style semi-automatics (MSSAs). Excluded from the definition of MSSAs, and therefore not subject to these particular restrictions, are semi-automatic firearms that are maintained at all times in a “sporting configuration”. A semi-automatic firearm is in a sporting configuration if it is without any of certain specified features, one of which is a “military pattern free-standing pistol grip”.

[2] Mr Lincoln, the applicant in this proceeding, is the owner of a Heckler and Koch (or H&K) SL8 rifle. As a result of a review conducted in late 2008 and the first half of 2009 on the meaning of “military pattern free-standing pistol grip”, the police are of the view that this firearm is a MSSA. Mr Lincoln disagrees. Mr Lincoln has brought this proceeding for judicial review as a result. The respondent, the New Zealand Police, says that the proceeding has been incorrectly brought but that it would nevertheless be appropriate for this Court to adjudicate on the issue of whether the police interpretation of “military pattern free-standing pistol grip” is correct.

[3] I will consider the matter in this order:

- a) the legislation;
- b) the review by the police;
- c) the correct nature of the proceeding;
- d) the meaning of “military pattern free-standing pistol grip”.

## The legislation

### *History of legislative provisions*

[4] The purpose of the Arms Act is “to promote both the safe use and the control of firearms and other weapons”. It seeks to do that by licensing people rather than firearms (it replaced legislation which required the registration of individual firearms). So, to lawfully possess a firearm, a person must be the holder of a firearms licence.<sup>1</sup>

[5] Prior to amendments made in 1992 there were no particular provisions relating to MSSAs. The Act did have particular provisions that applied to “pistols” and “restricted weapons”. Restricted weapons were those weapons declared by the Governor-General to be restricted weapons (and the Governor-General duly declared such things as molotov cocktails, machine guns, sub-machine guns and explosive mines as restricted weapons). A firearms licence did not permit a person to have a pistol or restricted weapon in their possession unless they had an endorsement for this.

[6] On 13 November 1990, within the period of an hour from about 7.30 pm, a young man named David Gray murdered 13 people and wounded three others. In the ensuing efforts by police to apprehend Mr Gray, he was also killed. This tragedy took place in Aramoana, a small seaside settlement near Dunedin. At least four of Mr Gray’s victims were killed with a Norinco 84S 5.56mm semi-automatic rifle which Mr Gray owned.<sup>2</sup> Mr Gray owned three other semi-automatic firearms and, in the morning of the day he carried out his killing spree, he had ordered another. As well as these firearms, Mr Gray’s home had a good deal of ammunition and literature about war and destruction. According to one expert, as recorded in the Minister’s speech introducing the Bill to amend the Arms Act, Mr Gray went on a commando fantasy when he killed his victims.

---

<sup>1</sup> s 20(1) of the Arms Act.

<sup>2</sup> There was difficulty identifying which firearm Mr Gray had used for all the victims because Mr Gray also fired a .22 calibre rifle which has an almost identical projectile diameter as the Norinco semi-automatic that Mr Gray owned.

[7] Mr Gray was known to the police as reclusive and eccentric but was not thought to be a major concern. He had a firearms licence but did not have an endorsement for a pistol or a restricted weapon. The police were not aware that Mr Gray had four semi-automatics and had ordered another. There was nothing in the legislation which required them to have this information. Nor was there anything in the legislation to restrict Mr Gray owning a semi-automatic once he had a firearms licence, nor the number that he could own.

[8] Mr Gray's Norinco 84S 5.56 mm semi-automatic was a Chinese manufactured gun that looked like an AK47. The AK47 is an assault rifle that was developed by the Soviet Union towards the end of the Second World War. It seems that, from about 1985, Chinese manufacturers began exporting AK47 look-alikes to Western countries in large numbers.<sup>3</sup> By the early 1990s the police estimate of the number of military style semi-automatics in New Zealand was 12,000 to 14,000 although others believed the number to be much higher than that.<sup>4</sup> In July 1989 the Commissioner of Police had recommended to the Minister of Police that a legislative ban on importing certain firearms be considered.<sup>5</sup>

[9] The Aramoana tragedy was the trigger for the review of the Arms Act that led to the 1992 amendments.<sup>6</sup> In the immediate aftermath the Minister of Police pledged to ban semi-automatic firearms,<sup>7</sup> or at least to ban any further importations of them and work began on amendments.

[10] In June 1991, at which time no legislation had emerged, the Commissioner of Police imposed a ban on all further imports of military style semi-automatics. The press release referred to a ban on "semi-automatics". A list of firearms identified by manufacturer and model that the ban was to apply to was announced. This ban was overturned by the High Court in *Practical Shooting Institute (NZ) Inc v Commissioner of Police*.<sup>8</sup> The High Court considered that the effect of the absolute

---

<sup>3</sup> (28 November 1991) 521 NZPD 5718.

<sup>4</sup> (14 October 1992) 530 NZPD 1176.

<sup>5</sup> This recommendation is referred to in *Practical Shooting Institute (NZ) Inc v Commissioner of Police* [1992] 1 NZLR 709 at 711.

<sup>6</sup> (28 November 1991) 521 NZPD 5717.

<sup>7</sup> *Hansard* does not indicate whether the Minister was more specific than this: (28 November 1991) 521 NZPD 5717.

<sup>8</sup> *Practical Shooting Institute (NZ) Inc v Commissioner of Police* [1992] 1 NZLR 709.

ban of certain kinds of firearms imposed by the Commissioner was to legislate and that power had not been given to the Commissioner. That power was vested in Parliament, with the Commissioner having a discretionary power to grant or refuse permits on individual applications made to import firearms.

[11] The Government then put in place a ban via a customs prohibition to apply until the legislation was amended.

[12] The 1992 amendments made particular provision for MSSAs. They did not ban MSSAs outright. Instead, like the provisions already in place for pistols and restricted weapons, the amendments were directed to restricting their availability and vetting the persons who owned them and so contained provisions controlling importing, supplying and possession of MSSAs. The new provisions were seen as a balancing of interests: the safety of the public and that responsible users of firearms should be able to pursue their work or sport without unnecessary restriction.<sup>9</sup> The Opposition considered that the balance had not been struck appropriately, with some speeches in the House stating that there was no legitimate sporting use for any military style semi-automatic and that they should be completely banned.<sup>10</sup>

[13] The speeches in the House contain no real detail about the type of firearm intended to be subject to the new provisions. Various reference is made to “Rambo style weapons”,<sup>11</sup> “‘Rambo’ weapons”,<sup>12</sup> “military-style Rambo-type guns”,<sup>13</sup> “Rambo-type AK47, and the large-calibre 30-round weapons with banana-shaped magazines”,<sup>14</sup> “AK47” and “AK47 look-alikes”,<sup>15</sup> “AK47- type”,<sup>16</sup> “AK47 semi-automatic military machine-guns”,<sup>17</sup> “military semi-automatic types”<sup>18</sup> and

---

<sup>9</sup> (28 November 1991) 521 NZPD 5719; (22 September 1992) 529 NZPD 11089, 11097; (14 October 1992) 530 NZPD 11767, 11772.

<sup>10</sup> (28 November 1991) 521 NZPD 5725, 5729.

<sup>11</sup> (28 November 1991) 521 NZDP 5718; (22 September 1992) 529 NZDP 1107, 11097, 11100, 11106.

<sup>12</sup> (22 September 1992) 529 NZDP 11089.

<sup>13</sup> (28 November 1991) 521 NZDP 5718.

<sup>14</sup> (22 September 1992) 529 NZDP 11096.

<sup>15</sup> (28 November 1991) 521 NZDP 5717, 5718 and 5722.

<sup>16</sup> (28 November 1991) 521 NZDP 5720.

<sup>17</sup> (28 November 1991) 521 NZDP 5723.

<sup>18</sup> (28 November 1991) 521 NZDP 5725.

“military-style weapons”,<sup>19</sup> a “Norinco AK47”,<sup>20</sup> “military-style semi-automatic”.<sup>21</sup>

[14] The reference to “Rambo” in these speeches is to a fictional character from the book “Red Blood” and a series of films in which Sylvester Stallone plays Rambo. The character is a Vietnam war veteran who is macho, self-sufficient and bent on violent retribution.<sup>22</sup> Rambo uses all sorts of weapons but one of his weapons of choice is the AK47.<sup>23</sup>

[15] From the introduction of the Bill until it was enacted there was no material change to the drafting of the relevant definitions of “military style semi-automatic firearm” to which the new controls would apply, and semi-automatics in a “sporting configuration” to which the new controls would not apply. There is no real discussion of these definitions in the speeches. At the Bill’s introduction the Member for Invercargill referred to the definition of sporting configuration as “closely defined”.<sup>24</sup> At the third reading the Member for St. Albans said it had not been adequately explained why the definition for military style semi-automatics was in the double negative.<sup>25</sup>

[16] The Report of the Justice Law Reform Committee said this:

In particular, a number of good points were made about the definitions in the Bill, including the definition of “part”, according to which something could have been imported for one purpose and used for quite a different one. There was some controversy over the definition of “military-style semi-automatic firearm” and “sporting configuration”, and the problem of a weapon that, clearly, no sensible person would want a bar of but that might be OK for genuine sporting uses. I believe that we have struck a balance. We have given the police the power to make some of those decisions in the light of the circumstances that they find them.

---

<sup>19</sup> (28 November 1991) 521 NZDP 5725.

<sup>20</sup> (28 November 1991) 521 NZDP 5729.

<sup>21</sup> (22 September 1992) 529 NZDP 11089; (14 October 1992) 530 NZDP 11766.

<sup>22</sup> Source is <http://www.encyclopedia.com>, citing *The Oxford Dictionary of Phrase and Fable* (2006).

<sup>23</sup> Lewis Jones “Weapon of choice for children, rebels and soldiers”: (28 June 2007) Telegraph [www.telegraph.co.uk](http://www.telegraph.co.uk); World of Rambo (<http://rambo.org.com>).

<sup>24</sup> (28 November 1991) 521 NZPD 5727.

<sup>25</sup> (14 October 1992) 530 NZDP 11769.

*The legislative provisions*

[17] Under the 1992 amendments, amongst other things:

- a) a permit is required to bring any MSSA into New Zealand;<sup>26</sup>
- b) a person who is of or over 18 years and who holds a firearms licence may apply for an endorsement (an E endorsement);<sup>27</sup>
- c) the endorsement may be granted by the police if satisfied that the person is a fit and proper person to be in possession “of the military style semi-automatic firearm to which the application relates;<sup>28</sup>
- d) the endorsement may be subject to conditions;<sup>29</sup> and
- e) new offence provisions were created.

[18] Section 2 defined “military style semi-automatic firearm as follows:

**Military style semi-automatic firearm** means—

- (a) A firearm which, after being loaded, fires, ejects, and chambers a cartridge with each pull of the trigger; but
- (b) Does not include—
  - (i) A pistol; or
  - (ii) A semi-automatic firearm that, with its magazine (if any), is maintained at all times in a sporting configuration:

[19] Section 2 defined “sporting configuration as follows:

**Sporting configuration**, in relation to a semi-automatic firearm, means being without any of the following features:

- (a) A folding or telescopic butt:

---

<sup>26</sup> s 16(1).

<sup>27</sup> s 30A.

<sup>28</sup> s 30 B.

<sup>29</sup> s 30B.



- (b) A magazine that is capable of holding, or that, by its appearance, indicates that it is capable of holding,—
  - (i) In the case of a magazine designed to hold .22 inch rimfire cartridges, more than 15 cartridges; or
  - (ii) In any other case, more than 7 cartridges:
- (c) Bayonet lugs:
- (d) A military pattern free-standing pistol grip:
- (e) A flash suppressor:

### **The review by the police**

[20] Following the 1992 amendments the police published an information booklet about the new provisions. In the booklet the police said this about their view of “military pattern free-standing pistol grip”:

Any free-standing pistol grip must be removed entirely. It’s not sufficient to add more material between the bottom or back of the grip and the stock, and then argue that it’s no longer “free standing”. The only practical option is to completely remove both the free-standing pistol grip and the stock, and replace them with an integral, one-piece thumbhole stock. Note that all types of free-standing pistol grips are considered “military pattern” because only firearms designed to be or resemble military weapons have them. You can’t legally convert an MSSA by replacing one free-standing pistol grip with another, and claim it is now “civilian pattern”.

[21] It can be seen that the police interpretation emphasised the free-standing nature of the pistol grip, and were of the view that if the grip was an integral, one-piece thumbhole, stock then it was not free-standing. But if it was free-standing (ie not integral) then it was viewed as military pattern. Mr Lincoln said that this interpretation of “military pattern” was viewed (I infer by at least some firearm holders) as more restrictive than the legislation provided for, but was tolerated in good faith by firearms users.

[22] Mr Woods, an expert who prepared an affidavit for Mr Lincoln for this proceeding, said that as a result of the amendments licensed firearm owners who possessed firearms that were affected by the MSSA definitions sought lawful ways to keep their firearms without having to incur the expense, inconvenience and restrictions of obtaining an E endorsement. Mr Woods designed and manufactured a

grip that could be fitted to affected firearms which, in conjunction with other requirements of the Act, would make the firearm into a “sporting configuration”. The police response was that this was contrary to the spirit and intent of the amendments but nevertheless confirmed that it viewed the grip as not being within the “military pattern free standing pistol grip”.

[23] For around 16 years the police did not take issue with “hundreds” of grips that Mr Woods used to convert MSSAs into “sporting configuration”. Other firearm owners were able to purchase semi-automatics on the basis that the police viewed them as within the “sporting configuration” definition. An affidavit from Superintendent A McLeod (National Manager: Operations) confirms that, from 1992, the police took the view that if a semi-automatic either had or was converted to have a thumbhole stock, then it was not regarded as free-standing. Modifications to meet this definition were regarded as not being within the “spirit” of the Act, but as meeting “the letter of the law”.

[24] However, the police view changed when it reviewed its interpretation as a result of its concerns about the sporting configuration exception. This was against the background of what the police considered to have been the considerable evolution in the manufacture of military style firearms for civilian sporting purposes, and manufacturers of military pattern firearms producing models in a civilian configuration aimed at circumventing firearm restrictions. (The applicant does not agree with this, pointing to two examples of stocks designed many years before 1992 and which the police now consider require an E endorsement.)

[25] As a result of the review, in June 2009 the police decided that a semi-automatic firearm would be considered to have a military pattern free-standing pistol grip, and would therefore be a MSSA, if it had any of the following features:

- a) An obvious pistol grip below the trigger guard that allows a full hand pistol grip irrespective that the pistol grip may be connected to the stock – this includes the HK USC .45, SL8-4 and Dragunov style stock;

- b) Any addition that connects the pistol grip to the stock or butt in an attempt to make it no longer free standing (such as adding a metal or plastic rod);
- c) A second grip forward of the trigger.

[26] This represented a change to the interpretation it had previously applied and meant that licence holders of some firearms previously classified as A category would now need an E endorsement. The police put in place a policy to inform firearms licence holders of its new interpretation and how to comply with it. Firearms licence holders with semi-automatics now viewed by the police as having “military pattern free-standing pistol grips” were given until 31 March 2010 to apply for an E endorsement, sell or dispose of the firearm or surrender the firearm, or to convert their MSSA into a sporting configuration.

[27] The information provided by police included an “advisory” statement from Superintendent McLeod to Arms Officers and Arms Dealers dated 9 June 2009. In this statement the police advised of their interpretation as follows:

If the semi automatic firearm has an obvious pistol grip that allows a full hand pistol grip, enabling the firearm to be used as an assault weapon then the qualifier of ‘military pattern free standing pistol grip’ is met irrespective that the pistol grip may be connected to the stock. The HK USC .45 and SL8-4, and the druganov style stock retain the practical functionality of a pistol grip and much of the appearance and thereby fall within the definition of being MSSAs.

[28] The statement added that a “fore grip also comes within the definition of ‘military pattern free-standing pistol grip”.

[29] The statement included a photographic montage of 6 firearms which were viewed by the police as not falling within this revised interpretation of “military pattern free-standing pistol grip” and 9 firearms which were viewed as within that interpretation. Broadly speaking the photographs in the latter category have a hand grip that extends vertically below the action to a greater degree than those in the former category and, where attached to the stock, have large thumbholes in the stock. A later photomontage published in NZ Guns and Hunting magazine included one

firearm as now within the revised interpretation, which had been one of the 6 firearms shown in the photomontage of 9 June 2009 as not within the revised interpretation of “military pattern free-standing pistol grip”.

[30] A police communication dated 2 July 2009 from Superintendent McLeod to District Commanders, Area Commanders, Arms Officers, Firearms dealers and Firearms user organisations set out this interpretation:

A semi-automatic rifle that has a grip which has either the appearance *or* function of a military pattern free-standing pistol grip is classified as an MSSA. A semi-automatic rifle with any of the following features is considered to have a ‘military pattern free-standing pistol grip’ and is therefore a MSSA:

- an obvious pistol grip below the trigger guard that allows a full hand pistol grip irrespective that the pistol grip may be connected to the stock – this includes the HK USC .45, SL8-4 and Dragunov style stock
- any addition that connects the pistol grip to the stock or butt in an attempt to make it no longer free standing (such as adding a metal or plastic rod).
- a second grip forward of the trigger.

[31] One of the firearms the police had previously considered was not a MSSA, but now consider to be a MSSA, is Mr Lincoln’s Heckler and Koch SL8 rifle. Mr Lincoln has held a firearms licence for about 16 years and uses his firearms regularly for hunting and pest control. Mr Woods’ evidence is that the Heckler and Koch SL8 rifle has been designed and manufactured as a civilian sporting firearm and it is not used anywhere in the world as a military weapon.

### **Nature of proceeding**

[32] Mr Lincoln’s claim is brought under the Judicature Amendment Act 1972. He alleges that the 2 July 2009 advisory statement (refer [30] above), and the threat of prosecution if he does not comply with the options set out therein in respect of his H&K SL8 rifle, are an “error of law”. He seeks a declaration that the advisory is an error of law because it incorrectly interprets the Arms Act, and a declaration that he is not liable under ss 30, 33, 35 and 50 of the Arms Act 1982 for having the rifle in his possession.

[33] Errors of law made when exercising a “statutory power”<sup>30</sup> are reviewable under the Judicature Amendment Act.<sup>31</sup> When considering Mr Lincoln’s application for interim relief MacKenzie J commented that it was questionable whether the actions of the police in arriving at a new interpretation, and publishing the steps it proposes to take in consequence of that reinterpretation, are the exercise of a statutory power under the Judicature Amendment Act.<sup>32</sup> For the police it is submitted that the advisory is the opinion of the police and that is not a statutory power as defined. I agree with that submission. Under the Arms Act the police do not have the ability to make a binding classification as to whether a firearm is a military style semi-automatic as defined in that Act.<sup>33</sup> That is a question of statutory interpretation for the Court in any particular case where that issue is relevant to the matter before it.

[34] Mr Lincoln endeavoured to counter this point by submitting that the police were “purporting” to exercise a statutory power because the effect of the police’s actions was to reclassify firearms. That was said to be because the police required Mr Lincoln to obtain an E endorsement or to surrender or dispose of it by lawful means. Mr Lincoln referred to *Practical Shooting (NZ) Inc v Commissioner of Police* (referred to above) as supporting his submission. I do not agree with Mr Lincoln’s submission. The police have no power to require Mr Lincoln to take any of the steps set out in the advisory. The consequence of not complying with those steps is that the police could prosecute him. If that were to happen the Court, not the police, would decide whether any offence had been committed. *Practical Shooting Inc* is distinguishable because there the Commissioner had a statutory discretionary power to grant or refuse import permits for firearms (which the Court found the Commissioner to have unlawfully fettered).

---

<sup>30</sup> As defined in s 3 of the Judicature Amendment Act.

<sup>31</sup> Pursuant to s 4 of the Judicature Amendment Act.

<sup>32</sup> *Lincoln v New Zealand Police* HC Palmerston North CIV-2009-454-473, 5 August 2009.

<sup>33</sup> The only statutory powers exercised by the police under the Arms Act that relate to these firearms are: a) the power to issue a permit to import one (s 18); and b) the power to make an endorsement on a firearms license to authorise possession of a MSSA (s 30B) and to impose conditions on that endorsement (s 33A).

[35] As suggested by counsel for the police I propose to treat the proceeding as an application under s 3 of the Declaratory Judgments Act 1908.<sup>34</sup> That seems the most obvious jurisdiction to provide Mr Lincoln with the certainty he seeks about whether the new police interpretation is correct (and it does not narrow the issue before me any more than if I considered the matter as reviewable in the manner discussed in *Gillick v West Norfolk and Wisbech Area Health Authority*<sup>35</sup> which is the alternative proposed by Mr Powell). Section 3 confers jurisdiction for the court to make a declaratory order because Mr Lincoln desires to possess his H&K SL8 without an E endorsement and the legality of that depends upon the construction of the term “military pattern free-standing pistol grip” as used in the Arms Act.

### **Meaning of “military pattern free-standing pistol grip”**

#### *Overview of the parties’ respective positions*

[36] The parties agree that some semi-automatic firearms clearly have military pattern free-standing pistol grips and others clearly do not. For example both sides agree that the AK47 has a military pattern free-standing pistol grip. The pistol grip on the AK47 is directly below the action, adjacent to the trigger guard and is independent of the stock, as can be seen in the picture of the AK47 shown here:



<sup>34</sup> An example of this as an approach is *R v Sloan* [1990] 1 NZLR 474. In that case Mr Sloan had been informed by Internal Affairs that they considered machines operated at his business were illegal games of chance under the Gaming and Lotteries Act 1977 and that if he did not cease operating them he would be prosecuted. Mr Sloan brought an application for judicial review under the Judicature Amendment Act 1972. The High Court viewed this procedure as unavailable in part because Internal Affairs had no power to decide whether the activity was unlawful, that being a matter for the Court’s determination. The Court instead treated the application as if it had been brought under the Declaratory Judgments Act 1908.

<sup>35</sup> *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 at 426.

[37] Both sides also agree that the Remington Woodmaster 742 semi-automatic does not have a military pattern free-standing pistol grip. The pistol grip on this firearm is behind the action and is connected to the stock, as can be seen in the picture of that firearm shown here:



[38] Both sides agree that some semi-automatics are a contrivance intended to get around the definition. Such a semi-automatic looks like this:



[39] There are, however, a range of semi-automatics which have pistol grips in between these two examples about which there is disagreement. One of them is Mr Lincoln's Heckler & Koch SL8 rifle. This is manufactured in different colours. I understand Mr Lincoln's rifle to be black, but the one shown below is in white:



[40] The police submit that Parliament’s intent was to regulate the risk that MSSAs posed, in the wake of the events at Aramoana, by reference to the appearance and function of the firearms and that a purposive approach should be applied to the phrase “military pattern free-standing pistol grip”. The police submit that an “obvious” pistol grip that is below the trigger guard and which allows a full hand grip has the function and appearance of a military style free-standing grip and so should fall within that description.

[41] Mr Lincoln submits that “military pattern free-standing pistol grip” has an ordinary meaning and that, by using these words, Parliament intended to regulate MSSAs in a closely defined manner. He submits that the definition regulates by reference to two specific attributes: first, the design and manufacturing system under which the grips are made (military pattern); and secondly, the connectivity relationship the pistol grip has with the rest of the firearm (free-standing). He submits that the new interpretation the police intend to apply does not give effect to the ordinary meaning of this phrase and introduces a “grey” area as to what attributes will fall within the phrase.

[42] In assessing these submissions I consider first the individual components of the “military pattern free-standing pistol grip” before considering the meaning of the phrase as a whole as used in the Arms Act.

#### *Pistol grip*

[43] Mr Lincoln submits that the term “pistol grip” is a common term in hand held tools, appliances, pistols and agriculture. He submits that the term originates from pistols and has been part of the English language since the 15<sup>th</sup> century.



[44] Mr Lincoln supports his submission by reference to Mr Woods' evidence. Mr Woods is a gunsmith. He has considerable expertise in firearms. Amongst other things he has been an active shooter, collector (he has a collection of firearms specialising in military weapons 62 of which are machine guns), and student of firearms history and technology. I do not need to elaborate further because the police do not contest his expertise.

[45] Mr Woods' evidence was that the term means "a grip as found on a pistol, electric drill, hair dryer, or any other item utilising that type of handle where the index finger is used to operate the device, whether by trigger, switch, button, or similar system".

[46] Mr Lincoln and Mr Woods did not include any reference material. But for completeness I note that what they said is supported by dictionary definitions. The New Shorter Oxford English Dictionary (4<sup>th</sup> ed) defines "pistol-grip" as "a handle or grip shaped like the butt of a pistol, *spec.* on the underside of a gun-stock". The definition in the New Zealand Oxford Dictionary is "a handle shaped like a pistol-butt", and the Chambers Dictionary (11<sup>th</sup> ed) defines the term as "a handle (*usu* with a trigger mechanism) for a camera, etc, shaped like the butt of a pistol".

[47] Mr Lincoln's submission on the meaning of pistol grip is not contested by the police. Their revised interpretation refers to "an obvious *pistol grip* below the trigger guard that allows a full hand *pistol grip*..." (my emphasis) and so assumes a known meaning of pistol grip. Both sides agree that all long-arms have pistol grips. Both sides also agree that, regardless of the style of the pistol grip, its function is to facilitate the trigger hand holding the rifle while it is aimed and fired. To illustrate this point, the police accept that the grip for the trigger hand on the Remington Woodmaster 742 (para [37] above) has a pistol grip.

[48] What pistol grip falls outside the "sporting configuration" definition therefore depends on the meaning of "military pattern free-standing" rather than what is meant by a "pistol grip".

### *Free-standing*

[49] Mr Lincoln submits that the ordinary meaning of “free-standing” is something which is “structurally self supported”. He submits that this is the natural meaning of the term and that it is a term commonly used in construction, engineering and architectural design. In the context of a “free-standing pistol grip” he submits that a pistol grip is not free-standing when it is connected with or supported by the stock. Mr Woods had this opinion also.

[50] Taking this approach, the pistol grip on the semi-automatic in the picture at [38] above has a free-standing pistol grip because the rod bolted on is not performing any function: it is a cosmetic rather than integral connection between the stock and the grip and the stock can still be removed leaving the pistol grip intact. In contrast, Mr Lincoln’s Heckler and Koch SL8 rifle does not have a free-standing pistol grip, because the grip is integrated with the stock: removing the stock would also remove the trigger hand grip. On this approach, the Norinco MAK 90, which copies the AK47 mechanism but has a factory fitted thumbhole stock, does not have a free-standing pistol grip. The Norinco MAK 90 looks like this:



[51] The police interpretation is that a pistol grip is free-standing if it is an “obvious” pistol grip, that is below the trigger guard, and that allows a full hand grip. The police take that view even if the pistol grip is attached to the stock. Applying

this interpretation the police view the H&K SL8 and the Norinco MAK 90 as having free-standing pistol grips.

[52] Mr Lincoln takes issue with each part of that interpretation. He says that all pistol grips on long-arms can be said to be obvious, below the trigger guard and having a full hand grip. He illustrates this by reference to the Remington Woodmaster 742 (refer [37] above). This he says has a pistol grip that is obvious, with a cross hatching carved on it to highlight its presence. He says that the pistol grip extends below the trigger guard, assuming the test is applied when the firearm is horizontal and its barrel level (ie the grip extends lower down than the trigger guard). He says that the pistol grip allows a full hand grip. He illustrates this point with photographs showing his trigger hand holding his H&K SL8 and also holding a hunting rifle with a traditional stock (ie one like the Remington Woodmaster 742). In both cases the photo shows his index finger on the trigger and his other three fingers on and curled around the grip. He also says that anything less than a full hand grip means that the operator does not have optimum control over the firearm. He also says that some of the grips the police now say are MSSAs are behind, rather than below, the action.

[53] The police have prepared an affidavit from Mr Robert Ngamoki, Senior Police Armourer, which illustrates, by way of photographs showing how the semi-automatics would normally be held when being fired, what the police mean by obvious, below the trigger guard and having a full hand grip.<sup>36</sup> These photographs show that with some semi-automatics the hand grip is behind the action (as in the case of the Remington Woodmaster 742 for example) and in others the hand grip is below the action (as in the case of the AK47 for example). I understand the police to be saying that a “pistol grip below the trigger guard” means a grip where the hand is vertically below the action,<sup>37</sup> rather than a grip which is behind the action (even

---

<sup>36</sup> Mr Woods was present at the hearing of this matter and also took me through the grips of a number of the firearms. He took issue with the depiction of the grip shown for the Remington Woodmaster 742, but this was about what he viewed as being the unnatural height of the hand position and does not alter the overall point that on the AK47 style pistol grip the whole grip is clearly underneath the action which is not the case with the Remington Woodmaster 742.

<sup>37</sup> Mr Lincoln said that the photograph showing how the H&K SL8 would be held is wrong and that it would be almost impossible to steadily aim the firearm held in that position. I understand Mr Lincoln’s point to be that on the H&K SL8 grip the hand would not be in a straight vertical line but would be more angled and therefore it might be said that it is behind rather than below the action.

though it may extend lower than the trigger guard does). This fits with the photomontage released with the 9 June 2009 statement (refer [29] above).

[54] These photographs also show that with some semi-automatics, that is those without a thumbhole stock, the thumb of the grip hand is on top of the stock and behind the action. If the semi-automatic has a thumbhole then the thumb moves from above the stock to somewhere below the top of the stock. Where it moves to depends on the location of the thumbhole stock grip. In some cases the hand will be behind the action (although some of the hand may extend lower than the action) and in other cases all of the hand will be below the action.

[55] The photographs also show the variation in the size of the thumbhole. Where the thumbhole is large then the whole of the hand (other than the trigger finger) is wrapped around the pistol grip, whereas when the thumbhole is smaller the whole of the hand (except the trigger finger) is on the pistol grip but would also be said to be partly on the stock.

[56] Those with large thumbhole stocks located below the trigger guard have a more pronounced grip which looks more like the grip of a pistol (which is what I take the police to mean by “obvious”) and allow for a full hand grip (ie the grip hand cannot be said to be on the stock). Again this largely fits with the photomontage released with the 9 June 2009 statement. I say largely because at least two of the semi-automatics now said to have a free-standing pistol grip, although having a pronounced grip (looking like the grip of a pistol) around which the whole of the hand would be wrapped, have grips that appear to me from what I can see in the photographs (which only show a portion of the firearm) to be behind the action rather than below it (though that might also depend on what is encompassed within the term “action”).

[57] Perhaps the best illustration of the police interpretation is demonstrated by the following two firearms:



[58] The evidence before me is that Trade Me sought clarification from the police as to whether these firearms were now viewed as MSSAs. The response from an inspector was that the second one was viewed as a MSSA but the first one depended on this court case. From what I can see in the photograph of the first one, although the pistol grip is pronounced and looks like the grip of a pistol, the size of the thumbhole would not appear to allow a full hand grip in the way I understand the police to mean. The second one does fit with what I understand the police to mean by an obvious pistol grip, extending below the trigger guard and allowing for a full hand grip.

[59] The police interpretation is similar to wording that has been used in regulating “assault weapons” in the United States. The backdrop of the regulation of “assault weapons” that is relevant for present purposes is like the Aramoana tragedy: a Californian man fired an AK47 across a playground killing five school children and wounding 29 others and one teacher. Following that, a number of states, including California, passed legislation with new provisions regulating “assault weapons”.<sup>38</sup> Some of this legislation did so in part by defining “assault weapons” with reference to features of the firearm. One of those features was a “pistol grip

---

<sup>38</sup> T R Thompson, “Form or Substance? Definitional Aspects of Assault Weapon Legislation” [1990] 17 Florida State University Law Review 649 at 649 and 651.

that protrudes conspicuously beneath the action of the weapon”.<sup>39</sup> In Californian regulations this was in turn defined as “a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing”.<sup>40</sup>

[60] Further elaboration of this comes from a working group responsible for enforcing federal firearms laws. They said:<sup>41</sup>

The straight-line design of many military weapons dictates the use of a well-defined pistol grip beneath the action of the gun. Without a pistol grip, holding and firing the weapon would be difficult. A pistol grip also allows for one-handed firing and greater control during automatic firing. By contrast, traditional sporting rifles use a grip built into the wrist of the stock; in addition, one-handed firing is not usually used in hunting or target competitions. Therefore, the Working Group determined that well-defined pistol grips had no sporting purpose. (footnotes not included)

[61] Case law and commentary has considered the “protrudes conspicuously beneath the action of the weapon” wording. For example, the Firearms Law Deskbook<sup>42</sup> makes similar points as Mr Lincoln has made here, such as that almost all modern shot guns have what the industry would call a pistol grip, the hand position does not necessarily change and that “protrudes conspicuously” is a purely subjective test.

[62] In *United States v Oliver*<sup>43</sup> the submission for Mr Oliver, who had been prosecuted for unlawful possession of an assault weapon, was that the grip of his firearm was behind rather than below the action and therefore it did not protrude conspicuously “beneath the action”. The United States Court of Appeals for the Sixth Circuit rejected this submission. The Court referred to the Oxford English Dictionary and poetry as supporting a meaning for “beneath” of “lower than” or

---

<sup>39</sup> For example, this wording is found in the Roberti-Roos Assault Weapons Control Act of 1989 (California) and in the Violent Crime Control and Law Enforcement Act of 1994 (Federal law). The former requires only one of the specified features to be present to constitute an assault weapon, whereas the latter requires that there be at least two.

<sup>40</sup> Article 2: Definition of Terms Used to Identify Assault Weapons, 5469(d).

<sup>41</sup> Bureau of Alcohol, Tobacco and Firearms, Report and Recommendations of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (1989) at 7, as cited by Thomas Thompson “Form or Substance? Definitional Aspects of Assault Weapon Legislation” (1989-1990) 17 Fla St U L Rev 649 at 661.

<sup>42</sup> Stephen Halbrook *Firearms Law Deskbook*, Assault Weapon Prohibitions (online ed) at 10:7.

<sup>43</sup> *United States of America v Oliver* 390 F 3d 482 (6<sup>th</sup> Cir 2004).

“generally under” (rather than necessarily meaning “directly under”). In context the Court considered that the legislature had given no hint that the precise location of the grip (ie directly beneath the action or behind but lower than the action) mattered. Finally, the Court referred to the history, that is, that Congress was wanting to curb the threat posed by the growing number of “criminals and mentally deranged individuals armed with semi-automatic assault weapons”. The Court said that the history indicated that Congress intended to ban non-sporting rifles and that “[p]istol grips, such as the one in this case, aid the shooter in firing one-handed – a task not often required in hunting”.

[63] Mr Lincoln submitted a DVD in which he demonstrated one handed firing with a semi-automatic with a pistol grip like that of the Remington Woodmaster 742 as compared with one handed firing with his H&K SL8. The one-handed firing was demonstrated in three positions: from the hip; out in front with his arm extended; and from the shoulder. In all three positions, so far as I can tell from viewing the DVD, one-handed firing seems equally possible with each firearm and so the DVD illustrates that the pistol grip on the stock of a traditional hunting rifle may be as functional at one handed firing as the H&K SL8.

[64] The DVD does not, however, demonstrate one-handed firing with the pistol grip of an AK47 or other semi-automatic which both sides would agree would qualify as a military pattern free-standing pistol grip. Further, even if one-handed firing is possible with all long-arms, it appears that a function of a well-defined pistol grip below the action of the gun is to allow for one-handed firing and greater control during automatic firing, which attributes are seen as desirable for military firearms and unnecessary for sporting purposes.

[65] I therefore do not accept Mr Lincoln’s submission that all pistol grips on long-arm semi-automatics will fall within the new the police interpretation. Some pistol grips will be “obvious” (the police might equally have said “well defined” or “conspicuously protruding”) and this will be so where they extend below the action (whether directly underneath or behind but lower than the action) and allow the hand to be fully wrapped around the grip (rather than partly around the stock). I do accept Mr Lincoln’s point that the police interpretation involves an element of subjective

assessment and gives rise to “grey” areas and therefore uncertainty for firearm dealers and users.

[66] All of that aside, our legislation refers to a “free-standing” pistol grip so it is still necessary to consider whether the police interpretation is what is meant by “free-standing”.

[67] The Oxford English Dictionary (2<sup>nd</sup> ed) defines “free-standing” as meaning:

(a) standing alone; not attached or connected to another structure; not supported by a structural framework; (b) *fig.* Independent or autonomous; not belonging to a larger entity.

[68] In all cases the pistol grip of a semi-automatic is attached to another structure. In the case of the Remington Woodmaster 742 the pistol grip is attached to the stock. In the case of the AK47 it is attached to the action. In the case of the nine semi-automatics shown in the photomontage given with the 9 June 2009 statement the pistol grip is either attached to the action or to the action and the stock (although the third photograph may be – I am not certain about this – attached just to the stock). I consider that free-standing in this context means something other than “not attached ... to another structure”.

[69] Mr Lincoln’s interpretation is that if the pistol grip is integrated with the stock (ie they are part of the same piece of the firearm such that one cannot remove one from the firearm without removing the other) then it is not free-standing. That is an interpretation that is open on the natural meaning of the words. Such a pistol grip could be said to be “standing alone” or “independent or autonomous” and even “not belonging to a larger entity”. Although it is “attached” to the firearm, it could also be said to be not “connected” with any part of the firearm in the sense of being not an integrated part of another part of the firearm.

[70] The police interpretation requires a wider view to be taken of the meaning of “free-standing”. That is to say that if the hand can be wrapped fully around the pistol grip (so that the hand is only on the pistol grip and without any part of the hand being on the stock) then it can be said to be a grip which stands alone or which is independent or autonomous and therefore is “free-standing”. That seems a less



natural meaning of “free-standing” and if that were the intended meaning it might have been expected that different wording would have been used (eg a “well defined” pistol grip whether attached to the stock or not).

### *Military pattern*

[71] Mr Lincoln submits that “military pattern” is a technical term indicating that equipment meets military specifications. Mr Lincoln says that military pattern is used in the United Kingdom and military specification is used in the United States. In each case equipment that is manufactured to a military pattern or military specifications will have manufacturing and proofing marks that prove this, indicating that the equipment is suitable for military use.

[72] This submission was supported by evidence from Mr Woods. Mr Woods’ evidence was that:

“military pattern” is a specific design and manufacturing directive covering all aspects of an item from raw material to the finished product. All items produced under that system receive official military recognition, as in the ‘sealed pattern’ of all UK military items, and the military specification (milspec) identification numbers that identify all military items that are approved for service. All such items carry recognised inspectors marks to ensure they comply fully with the ‘pattern’. It is also a requirement under the International Law of Armed Conflict that all combatants use only those items that are legally approved as ‘military pattern’.

[73] The police contend that a full hand grip below the trigger is the way firearms are configured for military use. In this way they contend that their definition of pistol grips is a “military style” pistol grip and therefore within the definition of “military pattern free-standing pistol grip”.

[74] Mr Woods said that this is an overly generalised statement. He said that, while it was true that many military firearms do position the hand below the action, so do a large number of sporting firearms. With reference to a number of examples, Mr Woods said that it was a known historical fact that the military lag well behind the civilian market. In relation to the pistol grip in particular Mr Woods’ evidence was:

With the exception of the civilian designed and developed Thompson submachine gun which saw very limited military use in 1928, and a couple of WW1 machine guns, no pistol grips were used for general military use until 1938 in Germany. Thus, it is the military who have adopted the pistol grip long after it became popular for sporting use.

The difference lies in the design or 'pattern'. The modern thumbhole stocks (themselves based on stocks from the 1890's) bear no resemblance to the 'military pattern' pistol grips which tend to be fairly basic. The 'military pattern' pistol grips are just reflecting a trend or fashion in military firearms that have been in vogue since the 1960's.

[75] Similarly, Mr Lincoln took issue with the contention that military grips are a full hand grip below the trigger and sporting grips are not. He referred to the M14 military pattern rifle which is currently in service with the department of defence in the United States where the pistol grip is behind rather than below the action (similar to the grip on the Remington Woodmaster). Mr Lincoln also referred to the Anschutz sports, target shooting, bench rifle which has a grip entirely below the action, and also to the Ruger 10/22 rifle which was purpose built for the US Olympic Games team as a sporting rifle. The grip on the Ruger 10/22 is one of the grips included by the police in the photomontage as now said to be within the MSSA definition.

[76] As to that last point, I note that Californian law provides a specific exception from the "pistol grip protrudes conspicuously beneath the trigger" definition for Olympic Games sporting rifles.<sup>44</sup> Nevertheless I take Mr Woods and Mr Lincoln's overall point that to say that military grips are grips below the action and sporting grips are not is to overly generalise the position.

[77] The affidavit evidence filed for the police did not discuss the technical meaning of "military pattern" referred to by Mr Lincoln and Mr Woods. Mr Powell (counsel for the police) said that, though he did not know whether Mr Lincoln and Mr Woods were correct about this technical meaning, he did not take issue with it. Mr Powell submits that there was nothing to indicate that Parliament intended this technical meaning, noting that it was not referred to in *Hansard* and that Parliament had instead referred in unscientific terms to "Rambo" style weapons. Mr Powell submits that the intention was to restrict firearms with features that had particular

---

<sup>44</sup> Refer footnote 39 (Article 1: General Provisions, 12276.1(b)).

functions or which had the appearance of features that would be found on firearms designed for military rather than sporting application and which tended to make them more attractive to those with an unhealthy fascination with violence or killing. Mr Powell submits that the concern was with the capacity for uninterrupted and high-speed discharge and, in relation to the pistol grip, the ability to shoot one-handed and from the hip. Mr Powell submits that, giving effect to Parliament's purpose, military pattern simply means being of a military style (whether conforming to military specifications or not).

[78] The immediate difficulty I have with Mr Powell's submission is that Parliament has chosen to use the words "military pattern" in the definition of "sporting configuration". The purpose of the "sporting configuration" definition is to prescribe what takes a semi-automatic firearm out of the definition of a "military style semi-automatic firearm". If "military pattern" was intended to mean "military style" then it might be expected that the term "military style" would have been used. It might be inferred that, in not using "military style" which would have been consistent with the "military style semi-automatic firearm" terminology it had used, Parliament intended something different by the phrase "military pattern".

[79] Nor do I accept the submission that a technical meaning was not intended because there is nothing in *Hansard* to indicate that it was. It is not the case that *Hansard* sets out everything that is intended by legislation. Indeed, as the Court of Appeal has said "[t]he law is to be found in the enactment itself, and not in the subjective intentions of the draftsmen or of the department, nor those of the Minister or of other members of the legislature".<sup>45</sup> While the parliamentary materials may be helpful "as supporting a provisional interpretation of the words of the Act, or as helping to identify the mischief aimed at or to clarify to some ambiguity in the Act"<sup>46</sup> the absence of something in *Hansard* is not at all determinative.

[80] Against the background that "military pattern" appears to mean something different from "military style" I carried out some preliminary research as to whether the term appears in dictionaries or in international law. The research drew a blank.

---

<sup>45</sup> *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 at 675.

<sup>46</sup> *Marac Life Assurance Ltd v Commissioner of Inland Revenue* [1986] 1 NZLR 694 at 701.

The first meaning given of the term “pattern” in the *Oxford English Dictionary* is “a model, example, or copy”. The examples given in the dictionary of the history of the usage of “pattern” do not refer to “military pattern”.

[81] I sought further submissions from the parties about this. Both sides provided some material in response. Mr Powell advised that he had been unable to find any legal foundation for Mr Woods’ evidence quoted above (refer [72]). The only international instrument he was able to find concerning the weapons that may be used in combat was the First Additional Protocol 1977 to the Geneva Conventions (Part III). That, however, prohibits generally weapons that cause superfluous injury, unnecessary suffering or widespread, long-term, severe damage to the natural environment. It makes no reference to “military pattern” or “military specifications”.

[82] Mr Lincoln was similarly unable to produce any formal legal document or case law defining the term “military pattern” and supporting Mr Woods’ evidence that the International Law of Armed Conflict required that weapons be legally approved as “military pattern”. He did, however, provide a variety of references which confirm the meaning of “military pattern” as described in the first part of the quoted evidence from Mr Woods. One reference said this:<sup>47</sup>

From the 17<sup>th</sup> to the early years of the 18<sup>th</sup> century, most nations did not specify standards for military firearms. Firearms were individually procured by officers or regiments as late as the 1740s, and were often custom made to the tastes of the purchaser. As the firearm gained ascendancy on the battlefield, this lack of standardization led to increasing difficulties in the supply of ammunition and repair materials. To address these difficulties, armies began to adopt standardized “patterns”. A military service selected a “pattern musket” to be stored in a “pattern room”. There it served as a reference for arms makers, who could make comparisons and take measurements to ensure that their products matched the standard.

[83] Along similar lines:<sup>48</sup>

The introduction to RSAF, in 1856, of the new machines from America, and the system of producing interchangeable components that were all identical, was a step change in the concept of engineering manufacture in the UK. Since then components have been made by precision machines to very closely controlled dimensions specified on a drawing.

---

<sup>47</sup> Wikipedia under “Brain Bess” ([www.wikipedia.com](http://www.wikipedia.com)).

<sup>48</sup> [www.rsaf-aa.co.uk](http://www.rsaf-aa.co.uk)

Prior to that change, components were made predominantly by hand to replicate an approved pattern. It was the duty of the Board of Ordnance headed by the Master General of Ordnance to approve a master pattern for each type of weapon and to seal it by applying a hot, red wax seal, just like sealing a legal document. The sealed patterns were kept for reference in a Pattern Room at the Tower of London until 1841 when, after a disastrous fire at the Tower, the Pattern Room was transferred to the RSAF at Enfield. The Pattern Room, under Ministry of Defence ownership, then remained at RSAF until closure in 1988, albeit that it was occasionally moved between buildings as the collection grew.

The practice of applying wax seals to weapons has long since passed into history with the advent of engineering drawings but the principle remains. The Ordnance Board and the Master General of Ordnance still exist to evaluate and approve all new military weaponry and any later changes to the designs. Their approval is still signified by sealing the design though the process is now an administrative one of endorsing the master drawings, not involving any hot wax.

[84] Another reference said this:<sup>49</sup>

When Britain would call for arms, a Sealed Pattern was finalized of each weapon or accessory. These "Patterns" were referred to by all manufacturers and craftsmen, as the original to work from.

[85] There were various other references, such as an article on New Zealand Army Equipment referring to military equipment by reference to its Pattern, that being said to be the "official description" of an item.<sup>50</sup> Another comes from a newspaper article about knighthoods and refers to a "military pattern sword" having been used in earlier times for the bestowing of the knighthood.<sup>51</sup>

[86] Mr Lincoln also referred to Canadian cases, concerning issues arising in contexts other than firearm regulation, where expert evidence had referred to "military pattern vehicles"<sup>52</sup> and where there was evidence of a tender which specified "transfer via standard military pattern field ambulance".<sup>53</sup> Perhaps more relevantly, Mr Lincoln found the term referred to in a case about firearms which was decided by the Supreme Court of the Northern Territory of Australia.<sup>54</sup> The Court

---

<sup>49</sup> Dan Shea "The History of the MOD Pattern Room" (2004) 7 (4) *The Small Arms Review* 50.

<sup>50</sup> Barry and Matthew Sullivan *New Zealand Army Personal Equipment 1910-1945* (Wilson Scott Publishing, 2005).

<sup>51</sup> Paul Easton "*Dubbing sword set to rise again*" *Dominion Post* (New Zealand, 10 March 2009).

<sup>52</sup> *Canada (Minister of National Revenue) v Cast Terminals Inc* 2003 FCT 535 and *Gaetz v Canadian Armed Forces* Human Rights Tribunal 14/88 November 8 1988.

<sup>53</sup> *Laerdal Medical Canada Ltd v Department of Public Works and Government Services* Canadian International Trade Tribunal, File No PR-2003-078.

<sup>54</sup> *Lawrence v Hayes* [1989] NTSC 39 (7 November 1989).

was concerned with an appeal against conviction and sentence for possession of a SKS Semi-Auto Rifle without licence to do so. The Court said:

It was common ground that at the relevant time the firearm was a “firearm class D”, being a Chinese military semi-automatic rifle, which fell within the definition in the Firearms Act of a firearm of a military pattern which is self-loading or semi-automatic.

[87] It seems from that description that the legislation at the time used the term “military pattern”.<sup>55</sup> However the legislation has since been amended and that term is no longer used.<sup>56</sup>

[88] From all of this I accept Mr Woods’ evidence that “military pattern” is a term which has a particular technical meaning. It refers to equipment that meets military specifications. That technical meaning also fits with the natural and ordinary meaning of “pattern”. The use of that term, rather than “style”, suggests that the grip will conform to a pattern. That is, that it will be a model, example or a copy of something that has been specified or pre-determined. It does not suggest that the equipment (here the pistol grip) will be similar in appearance (ie in the style of), but not be the same, as a grip which meets military specifications. Nor does it suggest that it is concerned with any grip where the forehand will be vertically aligned under the trigger as is common with the hand position on the grip on military semi-automatics that (according to Mr Woods’ evidence) have been “in vogue”.

[89] I turn now to consider “military pattern free-standing pistol grip” as a phrase and in light of the purpose of the statutory provisions.

*Overall assessment of meaning of “military pattern free-standing pistol grip”*

[90] The starting point is the ordinary meaning of the words. Parliament did not refer simply to pistol grips, nor to “obvious”, “well defined” or “conspicuously

---

<sup>55</sup> The legislation referred to in that case was probably the Firearms Act No 2 1979 which included in the definition of a “firearm class D” a firearm which “is constructed primarily as an anti-personnel weapon (including a firearm of a military pattern which is self-loading or semi-automatic)”.

<sup>56</sup> The Firearms Act 1997. The research before me does not discuss the reason for the amendments.

protruding” pistol grips. It therefore appears to have had in mind a particular kind of pistol grip. The pistol grip to be subject to the new restrictions was a “military pattern free-standing” pistol grip. Giving effect to all components of the phrase, the natural and ordinary meaning of that phrase indicates that Parliament intended to require an E endorsement if a semi-automatic firearm has a grip which is independent of the stock and which is in the pattern of a grip that meets military specifications.

[91] The police interpretation requires that “military pattern free-standing” be read together to mean an obvious pistol grip that extends below the trigger and which allows a full-hand grip. This is on the basis that a full-hand grip extending below the trigger (the “free-standing component”) is common in military firearms and so is a grip that is in the military style (“the military pattern” component). This is not the natural and ordinary meaning of “military pattern” nor “free-standing”. It is also a less specific definition because it introduces subjective assessments as to what is an obvious pistol grip which extends below the trigger and which allows for a full-hand grip in a military style. Whether this is what Parliament intended, despite the ordinary and natural meaning of the words, requires an assessment of the context of that phrase in the Act in light of its purpose.

[92] The phrase “military pattern free-standing pistol grip” appears in the sporting configuration definition. It is one of a list of specified features which takes the semi-automatic out of that definition and into the MSSA definition. In some instances the feature listed in the sporting configuration definition specifically regulates by function: a folding or telescopic butt. Other features are defined with reference to their identity: a flash suppressor and bayonet lugs. In other cases the feature is defined with reference to function and appearance: the capability or appearance of a magazine. The only one of these that appears to relate only to a “cosmetic” feature, rather than a functional feature is the appearance of the magazine capability. Otherwise, the features may have military uses (whether or not all military firearms would include all of these features) but are not features ordinarily used or needed for sporting purposes (or in pest control or other lawful civilian activities).

[93] Similarly, a firearm which has a pistol grip independent of the stock and which conforms to military specifications may have military uses but is not a feature ordinarily used for sporting purposes. It becomes less clear to say that a pistol grip (though obvious and extending below the trigger), which is integrated with the stock and which does not conform to military specifications, has military uses but is not ordinarily used or needed for sporting purposes. A pistol grip of this kind may simply give the firearm user better two-handed control of the firearm (a safety feature which may be useful for sporting and other legitimate civilian purposes) and be no more capable of one-handed firing than a stock with an integrated grip in a more traditional rifle. That suggests that if Parliament intended to regulate the type of grip which the police interpretation covers, it can only have been doing so because it was seen as having a cosmetic feature of appeal to someone unsuitable to have such a firearm (ie someone with an unhealthy fascination in war, violence and killing).

[94] Turning to the broader context, the concern at the time arose out of the Aramoana tragedy. Mr Gray had a Norinco 84S 5.56mm semi-automatic. That was a firearm with features like the AK47 and there was a flood of AK47 look-a-likes available. Although the Norinco 84S can be manufactured in other ways, like an AK47 it does come manufactured with a pistol grip that is not integrated with the stock and is made to military specification. Mr Gray also had literature about war. Against that background both parties agree that there was a concern that features of combat weapons could appeal to the wrong sort of people.

[95] A pistol grip like that of an AK47, if to be used by the military, would be made to military specifications. A semi-automatic firearm with such a grip could be described as a “Rambo-style” weapon and an AK47 look-a-like. Regulating a pistol grip that was not integrated with the stock and which met military specifications would regulate an attribute of a firearm of potential appeal to someone with an unhealthy interest in combat weapons. It becomes less clear to say that an obvious pistol grip extending below the trigger and allowing a full hand grip, but integrated with the stock and not meeting military specifications, is a “Rambo-style” weapon or an AK47 look-a-like, or is otherwise a feature that would be of appeal to someone with an unhealthy interest in combat weapons. Further, the evidence does not



suggest that a pistol grip of this kind is any more dangerous in terms of its capacity for uninterrupted and high-speed discharge (as with, for example, the magazine size) or its ability to be concealed (as with, for example, a folding butt) as compared with an integrated pistol grip on a more traditional sporting rifle.

[96] It is therefore not clear that, in context and in light of the purpose of the statutory provisions, Parliament intended a broader and more subjective test which does not fit with the ordinary and natural meaning of the words used. It seems to me that, in using the words it did, Parliament had in mind a particular kind of grip which it described in a confined way rather than the looser definition which the police now propose to apply.

[97] If manufacturers are now producing firearms intended to get around the restrictions, and if that is of concern to the police (and others), then it may be that the legislation needs amending. It must also be remembered that a semi-automatic cannot have any one of the specified features for a “sporting configuration”. So a firearm that does not have a “military pattern free-standing pistol grip” will be a MSSA if, for example, the magazine has the size or appearance of the specified number of cartridges or it has a folding butt.

[98] Mr Lincoln makes the point that if, based on the police interpretation, a person obtains an “E” endorsement because their firearm has an “obvious” pistol grip, they could then “upgrade” the firearm with magazines of any capacity, folding stocks, military pattern free-standing pistol grips, bayonet lugs and flash suppressors and that this would be contrary to Parliament’s intent. I did not hear from the police if this would be possible or whether conditions of the endorsement could prevent this. It is, however, the position that to be within the “sporting configuration” definition the firearm must be maintained “at all times” in that configuration.

## **Result**

[99] The result is that I consider the police interpretation to be an incorrect construction of the term “military pattern free-standing pistol grip”. It follows that Mr Lincoln’s H&K SL8 rifle does not have such a grip. The grip is integrated with

the stock and does not conform with military specifications. I accordingly declare that:

- a) “military pattern free-standing pistol grip” as referred to in the Arms Act 1983 does not mean what is set out in the police communication dated 2 July 2009 (refer [30] above);
- b) Mr Lincoln’s Heckler & Koch SL8 rifle does not have a “military pattern free-standing pistol grip” as referred to in the Arms Act 1983.

Mallon J

Solicitors:  
A M Powell, Crown Law Office, PO Box 2858, Wellington (powell@crownlaw.govt.nz)

Copy to:  
Mr Lincoln

**IN THE CORONER'S COURT  
HELD AT Napier**

**IN THE MATTER** of the Coroners Act 2006

**AND**

**IN THE MATTER** of an Inquest into the  
deaths of **Leonard SNEE and  
Jan Miense MOLENAAR**

**Before:**

**David Crerar**  
*Otago/Southland Coroner*

**Appearances:**

**Russell Collins**  
*Crown Solicitor, Napier*

**Dates of Hearing:**

30 March 2010 to 1 April 2010

**Date of Provisional Findings:**

2 July 2010

**Final submissions:**

30 July 2010

**Date and time of  
Certificate of Finding:**

31 August 2010

---

FINDING OF CORONER, DAVID CRERAR

---

**[1] Introduction**

[1.1] SENIOR CONSTABLE LEONARD SNEE, a Police Officer stationed at Napier (Constable Snee), was shot at least twice (and possibly three times) and killed on the 7th May 2009 by JAN MIENSE MOLENAAR of Napier, unemployed (Jan Molenaar), after he had left the property of Jan Molenaar as demanded during the execution of a search warrant for drugs.

Jan Molenaar died at 41 Chaucer Road, Napier, on 8th May 2009, as a result of a single self-inflicted gunshot wound.

[1.2] This Finding is to be read in association with a Certificate of Findings issued pursuant to section 94 of the Coroners Act 2006.

[1.3] The deaths of both Constable Snee and Jan Molenaar were reported to me as the then Acting Coroner for the Eastland Region. I have since been formally designated by the Chief Coroner to conduct the Inquests.

[1.4] I have met Mrs Vicky Snee, the widow of Constable Snee and their sons, at a formal meeting in Napier on the 7th September 2009.

[1.4.1] I have met at a formal meeting in Napier, Delwyn Keefe, the former partner of Jan Molenaar, on the 7th September 2009.

[1.4.2] I have met Pieter Molenaar, the brother of Jan Molenaar, representing his family interests, at a formal meeting in Napier on the 7th September 2009.

[1.5] Case Coordinator, Leith Joseph, of the Hastings Coronial Services Unit, and Case Coordinator Gary Binney of the Dunedin Coronial Services Unit, and I have also spoken to members of all families and corresponded with them.

[1.6] In my Introduction to this Finding, it is appropriate for me to adopt, and paraphrase in some respects the position of the Police, given by Detective

Superintendent Drew at the conclusion of the evidence presented to the Inquest by the Police.

[1.6.1] *“The reaction of Jan Molenaar, to what was a routine Police search of a type carried out throughout New Zealand every day was extreme.... and totally out of proportion”.*

*“Any failures by Police in respect of their actions were not causes of the death of Constable Snee but were incidental to it”.*

*“Jan Molenaar murdered Constable Snee and then took his own life, this being his preferred option”.*

## [2] Purpose of Inquiry

[2.1] The purpose of an inquiry is set out under Part 3 of the Coroners Act 2006 (Act). Section 57 of the Act defines the purpose of inquiries as follows;

- (1) A coroner opens and conducts an inquiry (including any related inquest) for the 3 purposes, and not to determine civil, criminal, or disciplinary liability.
- (2) The first purpose is to establish, so far as is possible-
  - (i) That a person **has died**; and
  - (ii) The person's **identity**;
  - (iii) **When and where** the person died; and
  - (iv) The **causes** of the death; and
  - (v) The **circumstances** of the death.
- (3) The second purpose is to make **specified recommendations or comments** that, in the coroner's opinion, may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which the death occurred.
- (4) The third purpose is to determine whether the **public interest** would be served by the death being investigated by other investigating authorities in the performance or exercise of their functions, powers, or duties, and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers, or duties.

**[3] Evidence**

A significant volume of detailed evidence was provided to the Inquest hearing by the Police. I am grateful for the thorough examination conducted and for the quality of the depositions provided and exhibits produced. In summarising the evidence given by each witness I emphasise specifically such aspects as address my obligations, pursuant to Section 57 of the Coroners Act 2006, to ascertain the fact that a person has died, when and where the person died, the identity of that person, the causes of the death and the circumstances of the death.

I mean no disrespect, when referring to evidence provided by individual witnesses, if I do not refer in detail to all of the facts each has provided to me. It is appropriate that, within the constraints facing me, for only the matters I find to be of most value and significance to be referred to and identified.

Although each of Constable Snee and Jan Molenaar died at different times and with different causes, the evidence in most cases is generic and I have chosen to conclude a joint Finding as allowed by section 84 of the Coroners Act 2006.

**[4.0] Evidence Summary**

[4.1] Having had their attention drawn to the possibility of cannabis being grown at 41 Chaucer Road, Napier, Police obtained a search warrant for the premises. Senior Constables Grant Diver, Bruce Miller, and Len Snee, went to the property to search for the suspected cannabis plantation on 7th May 2009.

[4.2] After knocking at the door, the Police Constables were invited into the property by Delwyn Keefe, the partner of Jan Molenaar. Upon being asked if there were drugs on the property, Delwyn Keefe showed Constable Snee a room containing cannabis seedlings and mature plants and showed Constables Miller and Diver a box of one ounce bags of cannabis in the basement of the property. Whilst

Constable Snee was in the kitchen with Delwyn Keefe, and Constables Diver and Miller were in the basement, a friend of Delwyn Keefe and Jan Molenaar arrived. He was asked to wait whilst the drug search continued. Shortly after this time, Jan Molenaar returned to the house after taking his dog for a walk. Jan Molenaar was immediately very angry. He swore at Constable Snee and made his way past him to the hallway.

[4.3] Jan Molenaar went down the hallway and reappeared with a rifle. Constable Diver and Constable Miller ascended the stairs from the basement when they heard the altercation and then joined Constable Snee and the visitor, Lenny Holmwood and Delwyn Keefe in leaving the property by the quickest and most appropriate route. Whilst they were in the driveway to the property adjacent to the utility of Constable Snee at about 9:30am, Jan Molenaar fired his rifle at them from a position on the balcony outside the lounge to the property. One of these shots hit Constable Snee. Jan Molenaar shot Constable Snee two or three times, one or two of these shots causing fatal injuries. As they were attempting to escape up the hill, Jan Molenaar shot Constable Diver and Constable Miller. Constable Miller received a single gunshot wound to his back. Constable Diver sustained two gunshot wounds but it is not known if these were the result of one bullet or more.

[4.4] Jan Molenaar then returned inside the property, and after a protracted siege and extensive negotiations, took his own life by way of a single self-inflicted pistol shot to the head. It is calculated that this occurred at 1.28 pm on 8 May 2009.

**[5.0] Witnesses**

[5.1] DETECTIVE SUPERINTENDENT RODNEY THOMAS DREW of Police National Head Quarters (PNHQ), Wellington (Superintendent Drew), is the officer tasked with establishing Investigation Standards for Police CIB.

- [5.1.1] Superintendent Drew was directed, on the morning of the 7th May 2009, to take charge of the criminal investigation into the death of Constable Snee. At the time Superintendent Drew arrived in Napier, Jan Molenaar was contained within a cordon around his property at 41 Chaucer Road, Napier, in a state of siege.
- [5.1.2] The investigation supervised by Superintendent Drew established that Jan Molenaar shot Constable Snee whilst he was standing outside 41 Chaucer Road, Napier, at about 9.30 am on the 7th May 2009. Jan Molenaar suicided at 1.28 pm on the 8th May 2009. The Police investigation also established that Jan Molenaar had been a dealer in illegal drugs (cannabis) for at least 10 years prior to the shootings and that he had no other income apart from drug sales. Jan Molenaar disliked the gang culture and also saw himself as looking after the safety of his neighbourhood. As part of this he established an arsenal of firearms, explosives and ammunition in preparation for a possible siege.
- [5.1.3] Superintendent Drew considered that Jan Molenaar exhibited signs of an increasing paranoia in the weeks prior to his death, particularly after a visit to the property by the Police on an unrelated matter. Jan Molenaar was recorded as saying to associates that he would not go to jail and that he was concerned that, if his criminal activity was discovered, he would lose his property and assets, this being a matter of huge concern to him.
- [5.1.4] The body of Constable Snee was recovered from Chaucer Road in the late afternoon of the 8th May 2009 and was sent to Palmerston North where a post-mortem examination was conducted by Specialist Forensic Pathologist, Dr Katherine White who provided a Report which was produced by Superintendent Drew as an exhibit.
- [5.1.4.1] Constable Snee was identified by a Police colleague, Denis Michael Hurworth, who had known Constable Snee for 22 years. The Statement of Identification was produced by Superintendent Drew as an exhibit.



- [5.1.4.2] Constable Snee was examined by Daniel Robertson, a duly qualified advanced paramedic, who certified death and the "*Certificate of Life Extinct*" was produced by Superintendent Drew as an exhibit.
- [5.1.5] The body of Jan Molenaar was identified by his mother, Annabella Heather Molenaar, and the Statement of Identification was produced as an exhibit.
- [5.1.5.1] Peter Jay Foley, a duly qualified medical practitioner, examined the body of Jan Molenaar and declared him to be deceased. The "*Certificate of Life Extinct*" (Death Certificate) was produced as an exhibit.
- [5.1.5.2] The body of Jan Molenaar was transferred to the Wellington Mortuary where a post-mortem examination was conducted by Specialist Forensic Pathologist Dr John Rutherford. The Coronial Autopsy Report was produced as an exhibit.
- [5.1.6] Superintendent Drew outlined the reasons for the search for cannabis at 41 Chaucer Road, Napier. About four weeks prior to the day of the search a Police Constable smelt cannabis plant at or near the property and Police visiting 41 Chaucer Road later on an unrelated matter also noted a slight odour of cannabis plant. A further visit by Police a few days later (similarly on the unrelated matter but without knowledge of the previous visit) also considered that there was a smell of fresh outdoor cannabis. On the 27th April 2009 Constable Snee, on visiting an adjoining property, identified a strong odour of cannabis and later that day he submitted National Intelligence Application (NIA) queries in relation to the property and to Jan Molenaar.
- [5.1.7] The "*Intelligence*" obtained recorded a notation dated 4th December 1995 "*info received by anonymous letter that drugs are being sold from 41 Chaucer Road by Jan Molenaar, selling some to kids. Informant states he also has guns which informant believes are stolen*".

NIA records showed, in relation to Jan Molenaar - his name and address and driver's licence details, motor vehicle details, a list of convictions, (none of which

are relevant), and the fact that he had surrendered his firearms licence, "*obtained 7th June 1984, expired 1st November 2002*".

Superintendent Drew observed that nothing in NIA records would cause alarm and that there was nothing relating to current possession of firearms or explosives, drug dealing or mental state and intentions.

[5.1.8] Constable Snee obtained a Search Warrant for cannabis on the 28th April 2009. Other Constables, who had observed that 41 Chaucer Road may have been the site of growing cannabis, were unavailable to assist. Senior Constable Grant Lewis Diver and Senior Constable Bruce Edward Miller accompanied Constable Snee on his search. Constable Diver is a qualified Police drugs dog handler. The three Police Constables met at the top of Chaucer Road, parked one vehicle and travelled in two others to the property, leaving the dog of Constable Diver in the rear compartment of his vehicle.

[5.1.9] Delwyn Keefe, the partner of Jan Molenaar was in bed and unwell when the Police arrived. She had been roused by a text message from Lenny Holmwood, who wished to visit. Delwyn Keefe met and invited the three Police Constables into the property. After seeing the Constables through the window, she had taken a cardboard box containing 16 ounces of cannabis downstairs from the "*grow room*", a bedroom in which cannabis was being cultivated, into the garage.

[5.1.10] Upon entry to the address by the Senior Constables and being told they had a search warrant Delwyn Keefe immediately led Constable Snee and Constable Diver to the '*grow room*'.

Whilst they did this Senior Constable Miller went to search the basement and, almost immediately, located the sawn-off shotgun.

Meanwhile, Constable Diver informed Delwyn Keefe that he had a drug dog and was going to deploy it in the address. Delwyn Keefe then led him to the basement where she showed him the box of cannabis "*ounces*".

- [5.1.11] During the search Lenny Holmwood arrived to visit as he had arranged by text.
- [5.1.12] At 9.26 am Constable Snee telephoned the police photographer requesting his attendance at the property to record the cannabis discovered. At about this time Jan Molenaar arrived at the property, having returned from walking his dog. At this time Constable Diver was in the garage area, with Constable Miller, looking at the shotgun. Constable Snee was upstairs in the dining area with Delwyn Keefe and Len Holmwood.
- [5.1.13] Jan Molenaar was immediately aggressive and demanded that the Police leave the dwelling. Constable Diver, on hearing raised voices, went up the stairs to investigate, but did not consider there was any immediate threat, so returned downstairs to continue his search. Jan Molenaar disappeared down the hallway and reappeared, within a moment, with a rifle, believed to have been kept in the "grow room".
- [5.1.14] Although Delwyn Keefe attempted to calm Jan Molenaar and persuade him to put down the rifle, Jan Molenaar ordered them all out of the house. When they reached the road side Constable Snee stopped beside his vehicle on the footpath and turned to stand facing the house, close to Constable Diver and Constable Miller. Jan Molenaar appeared on the balcony to the house armed with a rifle (a Ruger Mini-14 .223 rifle equipped with telescopic sights). Jan Molenaar then shot Constable Snee once from this location.
- [5.1.15] Constable Miller and Constable Diver attempted to run to safety, Jan Molenaar fired up to six shots at them. A bullet passed through the right forearm of Constable Diver and lodged in his right lower abdomen. Constable Miller was hit in the lower back by a bullet. As Constable Miller and Constable Diver were trying to obtain a place of safety, Delwyn Keefe ran back inside 41 Chaucer Road and shouted at Jan Molenaar, who immediately left the house and, en route to the roadway, he fired at least one further shot at Constable Snee who had fallen at the roadside.

- [5.1.15.1] In her submission to the Provisional Finding Delwyn Keefe stated that she did not see Jan Molenaar leave the house and struggle with Lenny Holmwood on the road. She believed that Jan Molenaar was on the balcony. The Police have received the evidence of Dr Katherine White, Gerhard Weevers and Detective Sergeant Gary Milligan supervisor of the scene examination. The gunshot wound tracks were specifically identified by Dr Katherine White. I am satisfied that the conclusion of the Police, that some of the wounds sustained by Constable Snee could only have been caused whilst he was lying on the ground – the shots being fired by Jan Molenaar when he was standing in the driveway near the doors to the garage.
- [5.1.16] As Jan Molenaar was raising his rifle to shoot again at Constable Diver and Constable Miller, who were staggering/crawling up the road in search of safety, Lenny Holmwood struggled with Jan Molenaar and managed to turn the barrel of the rifle away. Jan Molenaar threw Lenny Holmwood to the ground and fired two shots, one of which hit him in the left thigh. Jan Molenaar returned inside. Lenny Holmwood attempted to help Constable Snee and drag him to cover, but was unable to do so.
- [5.1.17] Lenny Holmwood called 111 for help. Constable Miller called Police Communications on his portable radio at about the same time, and Constable Diver telephoned the Napier Police Station on his cell phone similarly requesting help. Neighbours, including Donald Garry Fraser, known as Garry Fraser, heard the gunshots and also telephoned 111.
- [5.1.18] Police assistance arrived almost immediately and an evacuation of Constable Miller, Constable Diver and Lenny Holmwood was arranged.
- [5.1.19] Members of the Armed Offender's Squad attended and, in spite of coming under fire from Jan Molenaar, assisted with making the area safe and established a cordon.

[5.1.20] Superintendent Drew, produced as exhibits, maps, plans and photographs of the area and a set of the NIA downloads obtained by Constable Snee.

[5.2] DELWYN ISMALE KEEFE of Napier, the former partner of Jan Molenaar (Delwyn Keefe), appeared on summons to give evidence.

[5.2.1] Delwyn Keefe had previously given a statement or statements to the Police, and had previously instructed a Solicitor. As well as answering questions from Mr Collins, she chose to make an oral statement detailing the events of the morning of 7th May 2009.

[5.2.2] I summarise her evidence:

Jan Molenaar would always take his dog for a walk for an hour from about 9.00 am every morning. On the morning of the 7<sup>th</sup> May Delwyn Keefe was unwell and went back to bed. She answered the text on the cell phone of Jan Molenaar from Lenny Holmwood and got out of bed again to answer a knock at the door. It was the Police. Constable Snee handed Delwyn Keefe the Search Warrant and Delwyn Keefe let Constable Snee, Constable Miller and Constable Diver come inside the house and took them into the kitchen. Delwyn Keefe said to Constable Snee:

*"When Jan gets back, he's going to be ropable".*

Lenny Holmwood arrived and was invited to take a seat in the kitchen.

[5.2.3] Not long after this, Jan Molenaar walked in the door:

*"And he said to the cops, get the f\*\*\*ing hell out of my house".*

Delwyn Keefe stayed in the kitchen with Lenny Holmwood and overheard conversations from the adjoining lounge:

*"Oh, come on, there's no need for that".*

Delwyn Keefe walked past Constable Snee into the hallway, and saw that Jan Molenaar had a rifle aimed at the three Police Constables. Delwyn Keefe said that she ran towards Jan Molenaar with her arms in the air and told Jan Molenaar to put the gun down. She then turned her back to Jan Molenaar and said to the Constables:

*"Get out, because you don't know him like I do".*

Senior Constable Miller said:

*"Okay then, we'll go".*

- [5.2.4] The three Police Constables went out the front door of the house. Lenny Holmwood was already outside. When Constable Snee stood at the doorway, Jan Molenaar told the Police again to leave the property. Delwyn Keefe left the balcony, walked down the steps and through the gates. Delwyn Keefe was the last to step off the bottom step and she heard Jan say

*"I f\*\*\*ing told you's"...and that's when the shootings all happened".*

- [5.2.5] Delwyn Keefe said she heard seven shots, but that she went straight up against the garage doors, closed her eyes and blocked her ears.

Delwyn Keefe, when she opened her eyes, saw somebody getting pulled away, dragged up hill. She then saw the body of Constable Snee.

Delwyn Keefe ran inside and said to Jan Molenaar:

*"Jan, Jan, you've shot a f\*\*\*ing cop".*

Delwyn Keefe then answered the phone. The call was the Police, asking questions. Delwyn Keefe then referred to *“three armed defenders [sic]”* running past the gate to the property, which created further shooting by Jan Molenaar, who then said to Delwyn Keefe, after putting the rifle down:

*“Bub, you are going, it’s over for me”.*

[5.2.6] Delwyn Keefe left the house, reversed her car out of the drive and then returned to the house to collect her cigarettes and cell phone before returning to the car. She was warned by the Police, in attendance, of the danger, but told them that she did not think that Jan Molenaar would harm her.

[5.2.7] The evidence of Delwyn Keefe was that Police – an assumption it was AOS – were at 41 Chaucer Road very quickly after the shooting started. The Police evidence as to timeline establishes that Delwyn Keefe must have been mistaken (due no doubt to her shock and distress at the events) and in fact minutes had passed before the arrival of the Police. Delwyn Keefe considered that even though Constable Snee, Constable Miller and Constable Diver had all left the property, as they had been told, Jan Molenaar shot them because they were still on the driveway to his property, the concept of which upset him.

[5.2.8] Delwyn Keefe allowed me to read the notes left by Jan Molenaar. There were two notes on a telephone number pad:

*“I was bad. I paid for my crime. I let everyone down, I know. JM”*; and

*“I love you Del, you are so loyal, faithful, good person. I did my best to make you happy, love JaniMo forever”.*

Delwyn Keefe considered that these notes were indicative of the remorse shown by Jan Molenaar for his emotional outburst.

- [5.3] SENIOR CONSTABLE GRANT LEWIS DIVER of the Napier Police attended the Inquest hearing and read the deposition prepared for him.
- [5.3.1] The evidence of Constable Diver duplicates, in some respects, that given by Superintendent Drew. Constable Diver recorded being shown by Constable Miller the black sawn-off shotgun located in the basement of 41 Chaucer Road adjacent to the bags of cannabis shown to them by Delwyn Keefe. Constable Diver then had his attention drawn to raised voices and an agitated male, clearly unhappy with Police being inside his house - the male is now known to be Jan Molenaar. Constable Diver returned downstairs to search, but again heard raised voices and went back upstairs where he saw Jan Molenaar point a firearm at Constable Snee.
- [5.3.2] Negotiation was attempted but Jan Molenaar said that he wanted them all out of the house. At this point they left and went through the back doorway and down the driveway to the front of the house. They were standing there when Jan Molenaar appeared on the balcony and fired several shots, one of which caused his injuries. Constable Diver then recorded Jan Molenaar following them to the roadside and firing again.
- [5.4] SENIOR CONSTABLE BRUCE EDWARD MILLER read the deposition prepared for him. He was contacted at 8.30 in the morning of 7th May 2009 by Constable Snee and asked to assist with a search warrant. The evidence of Constable Miller is similar to that of Superintendent Drew and Constable Diver. Constable Miller received a bullet wound in his central left lower back, which caused serious and lasting injuries.
- [5.5] LEONARD REX HOLMWOOD of Napier, a lifeguard (Lenny Holmwood), read the deposition prepared for him by the Police.
- [5.5.1] Lenny Holmwood had been a friend of Jan Molenaar and Delwyn Keefe for some years and had purchased cannabis from them in the past. He sent a text



message enquiring as to when Jan Molenaar was home and walked to 41 Chaucer Road shortly after 9 am on the 7th May 2009.

- [5.5.2] Lenny Holmwood was present when Jan Molenaar arrived back from walking his dog. Jan Molenaar immediately became agitated and demanded that the Police leave the house. He obtained a rifle, pointed it at the Police Officers and told them to leave. All of them, including Delwyn Keefe and Lenny Holmwood, left the property and were standing on the road side outside the house when Jan Molenaar started shooting at them.
- [5.5.3] Jan Molenaar followed them out towards the road and told Lenny Holmwood to leave the area. He saw Constable Miller and Constable Diver trying to stagger and crawl up the road, and as Jan Molenaar aimed the rifle at them Lenny Holmwood grabbed it and turned it away from the Police Officers. After a struggle, Lenny Holmwood was thrown to the ground; Jan Molenaar shot twice, the second bullet hitting Lenny Holmwood in the hip.
- [5.5.4] Whilst Jan Molenaar was going back to the balcony of the house, Lenny Holmwood attempted to assist Constable Snee, but, as he recognised the danger from the continuing shooting, he obtained a place of relative safety and called for emergency assistance.
- [5.6] SUPERINTENDENT SAMUEL MARK HOYLE of the New Zealand Police at Napier (Superintendent Hoyle) is District Commander of Eastern Police District, including Napier.
- [5.6.1] Superintendent Hoyle took immediate command of the shooting of Constable Snee at 41 Chaucer Road, Napier, as soon as he was advised of the incident and set up a command centre, tasked AOS members and briefed Inspector Kevin Kalff, Inspector Tony Dewhirst and Inspector Wallace to take charge of various aspects of the body recovery and siege. Included in the management brief were Tactical Commander, Inspector Phillips, Policing Negotiating Team Commander, Inspector Burdett, and Forward Commander, Inspector O'Leary.

- [5.6.2] The cordon and containment was conducted in accordance with Police standard operating procedures, as were subsequent negotiations by the Police Negotiating Team (PNT). It was the responsibility of Superintendent Hoyle to ensure an appropriate handover to Superintendent Drew at the conclusion of the tactical phase of the operation in order that the homicide investigation take place.
- [5.7] INSPECTOR LANCE BURDETT of the Auckland Police is currently Shift Commander at New Zealand Police Communications Centre, as well as being a member of the Auckland PNT (Inspector Burdett). The qualification of Inspector Burdett and his experience qualify him as being one of the most experienced and capable Police negotiators in the country.
- [5.7.1] Inspector Burdett was directed by Police National Headquarters (PNQ) to attend the Napier siege and he travelled immediately to Napier, arriving there at about 5 pm, at which time he took charge of communication with Jan Molenaar.
- [5.7.2] Standard negotiation tactics were employed - Police adopt the procedure of communication by landline, then cell phone, then text, and finally voice appeal. The voice appeal was considered being used as a last resort because Jan Molenaar had fired shots from the house when voice appeal was used in the earlier stages of the stand-off.
- [5.7.3] It was established that Jan Molenaar had been in the army and that he was in possession of firearms. It was understood by PNT that Jan Molenaar had no diagnosed mental or medical condition, nor did he use drugs or alcohol. Standard PNT procedures require a subject to be offered an exit strategy and all appropriate arrangements were put in place.
- [5.7.4] Because of a lack of progress in the negotiations, consideration was given to the option of a Third Party Intermediary (TPI). Inspector Burdett said use of a TPI incurred risk in that there can be limited control over what a TPI says and the use of a TPI may produce an adverse reaction by the subject, such as suicide as

soon as a TPI is introduced. Following international protocol Delwyn Keefe was employed as a TPI. She was briefed on her requirements by PNT, and by Detective Sergeant Moorhouse, whom was known to her.

[5.7.5] Inspector Burdett completed a risk assessment and a negotiator's position paper identifying the risks to both the subject and to the officer's involved in the siege. Risk factors identified were:

- Molenaar initiated the incident with extreme violence.
- The crisis site was his home address, which was believed to have incendiary devices hidden within it.
- The degree of violence at initiation was high and continued after additional police presence.
- Molenaar appeared to be hostile and was non-communicative.
- Molenaar had military experience and was believed to be well armed.

[5.7.6] Delwyn Keefe was employed as a TPI to text Jan Molenaar and ask him to talk to PNT. Telephone contact was made with Jan Molenaar after 11 pm on the 7th May 2009. Molenaar was quoted as sounding tired, depressed, but very defensive, saying that he had a number of surprises set up. This was interpreted to mean that the property was booby trapped. An attempt at contact was made by Detective Sergeant Moorhouse, but this call was disconnected. At 7 am on the 8th May 2009 Jan Molenaar telephoned PNT, which was taken as a positive sign that he was willing to talk to the negotiators.

[5.7.7] Delwyn Keefe, commenced dialogue with Jan Molenaar at about 8 am that day. It became apparent that he was depressed and an outcome of a conversation was that he indicated "*there was going to be an end that would be satisfactory to Police*". Jan Molenaar reiterated on a number of occasions he did not wish to harm anymore Police. This comment indicated to PNT that Jan Molenaar was suicidal and tactics were employed to address this issue, it being the preference of PNT that Jan Molenaar not suicide either directly or as "*suicide by cop*" which

involves a subject deliberately introducing themselves to the Police in a position where the Police were required to shoot the subject.

- [5.7.8] Inspector Burdett, in his risk assessment at this time, concluded that Jan Molenaar was high risk of committing suicide with a slight possibility of *"suicide by cop"*, so efforts were made to concentrate on suicide prevention.
- [5.7.9] Due to the fluctuating and deteriorating emotional level as assessed by the PNT, efforts were made to find a method to resolve the impasse. Jan Molenaar had requested during this telephone conversations with PNT to speak to a friend, Brett Herbert known as Womble. Brett Herbert presented himself at the Police Station and offered to intercede for the police. Police noted the after effects of a previous head injury and considered Brett Herbert to be supportive of their intentions, but considered that it was inappropriate for him to be used as a TPI due to the fact that they considered the only reason Jan Molenaar wished to talk to him was to *"say goodbye"* in preparation for suicide.
- [5.7.10] As time progressed the demeanour of Jan Molenaar changed from his expressing an intention to exit the property to his giving indications of depression and an intention to suicide. Jan Molenaar was remorseful and apologised for what he had done. Jan Molenaar asked that Brett Herbert be allowed to take hamburgers to him at 41 Chaucer Road, Napier, and *"chat"*. The protocols of PNT did not allow any person to enter a property under siege in case that person would be held as a hostage.
- [5.7.11] A change in the PNT was made and an attempt to resolve the situation, and at this stage Jan Molenaar asked again to talk to Delwyn Keefe. The understanding of PNT is that the use of Delwyn Keefe as a TPI may have prompted suicide, but a decision was made *"because everything else had been tried and failed"* and Delwyn Keefe was briefed on her responsibilities. Delwyn Keefe reassured Jan Molenaar as best she could as to his safety, but was told that *"he was sorry and just wanted to say goodbye to her"*.

- [5.7.12] Jan Molenaar also said that he was going to see Johan (Joe) Molenaar, who was a brother of Jan Molenaar who had suicided some years previously. Jan Molenaar became emotional, began crying, and PNT discontinued the assistance of Delwyn Keefe, but kept on talking to Jan Molenaar in an attempt to divert him from the possible suicidal action. Jan Molenaar then concluded his contact with PNT.
- [5.7.13] Inspector Burdett referred his debrief report for international peer review. One colleague in the USA recommended an enhancement to the TPI intervention which will be adopted in future appropriate cases by PNT.
- [5.8] INSPECTOR JOSEPH MICHAEL GREEN is Manager of Arms Act Licensing at Police National Headquarters (PNHQ), Wellington (Inspector Green).
- [5.8.1] Inspector Green told the Inquest of the New Zealand Firearm Licensing Legislation and its management regime. Since 1983 it has been the obligation of an individual in New Zealand to hold a Firearms' Licence if they wish to use firearms. The previous licensing regime required a registration of the firearm.
- [5.8.2] The basis of licensing is that a holder must be deemed "*fit and proper*" as defined in the Act. If a Police Officer is satisfied that an individual is fit and proper they are issued with a Class A licence, allowing them to possess and use sporting rifles and shotguns. Individuals who wish to possess other types of firearms (a pistol, restricted weapon or MSSA - Military Style Semi-Automatic) must satisfy further criteria established under the Arms Act in relation to their personal circumstances and security available for the weapons.
- [5.8.3] Under the 1983 Arms Act MSSAs were not the subject of a separate classification and it was not until the Arms Amendment Act 1992 that MSSAs were the subject of a separate and specific licensing requirement. The 1992 Arms Amendment Act also required a replacement of the previous lifetime licence by a 10 year licence and other security issues were addressed.

- [5.8.4] Inspector Green said that by 1998 there were approximately 50,000 persons who had not responded to the recall letters sent by the Police in relation to the effective cancellation of the lifetime licence. Individual files for those 50,000 “non-responders” were sent to the last known police district for enquiries to be made regarding their then current firearm ownership status.
- [5.8.5] Inspector Green mentions the Judge Thorpe report of 1997, I will refer to this later as the Thorpe Report.
- [5.8.6] Police enquiries established that Jan Molenaar had previously held a standard A Class lifetime firearms’ licence and a “C Class collectors’ endorsement”. This was issued on the 7th July 1984. It was thought probable that Jan Molenaar, as a previous firearm owner, was issued with a licence with little difficulty in formality.
- [5.8.7] On the 25th August 1990 Jan Molenaar purchased a “Ruger mini-14 semi-automatic rifle” in Hastings. The purchase was legal at the time because it was not until November 1992 that MSSA became the subject of specific licensing requirements. At some time after 1993 a letter would have been forwarded to Jan Molenaar as a lifetime licence holder requiring him to surrender that licence and have issued to him a 10 year licence. There were administrative difficulties with the licence recall system, but enquiries recorded during 2002 showed that the Police database was interrogated on three occasions, each resulting in the same response “licence surrendered, effective 1/12/1994”.
- [5.8.8] Police enquiries following the death of Jan Molenaar establish that it was likely that Jan Molenaar surrendered his licence. Evidence for this is that the police could not locate a “non-responder” file generated for Jan Molenaar. The surrender date information located on the Police database and the recollections of the previous (now retired) Napier Arms Officer, who was interviewed as part of the enquiry.

- [5.9] BRETT ALLAN HERBERT, an invalid beneficiary of Gisborne (Brett Herbert or Womble), appeared on summons and gave evidence following the deposition prepared for him by the Police.
- [5.9.1] Brett Herbert and Jan Molenaar met at Napier Intermediate School and continued to be friends. They were in the army together and met occasionally (two or three times a year). Brett Herbert described Jan Molenaar as being a kind fellow with a lot of respect for the Police. Brett Herbert did not know of any firearms held by Jan Molenaar, nor had he ever seen firearms or explosives at 41 Chaucer Road, Napier.
- [5.9.2] Brett Herbert offered to help the Police ensure a peaceful outcome from the siege and, when referring to his hearing the voice of Jan Molenaar during negotiations, said that Jan Molenaar was “very remorseful”.
- [5.10] GERHARD EDWARD WEVERS of Auckland, forensic scientist (Dr Wevers) is employed by ESR and has qualifications which entitled him to be treated as an expert witness for the purposes of the inquest.
- [5.10.1] Dr Wevers attended Chaucer Road, Napier between the 8th May 2009 and 16th May 2009 and conducted a scene examination focusing on the gun shots fired from and toward 41 Chaucer Road, Napier. Other ESR scientists assisted with the preparation of reports and the full Report of Dr Wevers was produced as an exhibit.
- [5.10.2] It is not necessary for me to quote exactly the evidence given by Dr Wevers, save for my summarising that he, with his associates, was able to identify all significant shots fired from or at 41 Chaucer Road, particularly identifying the trajectory of the bullets which killed Constable Snee and injured Constable Diver, Constable Miller and Lenny Holmwood.

- [5.10.2.1] Dr Wevers was unable to identify forensically which of the "Ruger Mini-14 MSA's", fired the Fatal shot but was of the opinion that the bullets were from one or other of them.
- [5.10.2.2] The investigation determined, through the combination of the forensic analysis of the shell casing found on the road, the statements of the witness descriptions of the firearm and the scene examination, that the Ruger Mini-14 .223 calibre rifle with the silver barrel, folding stock and scope was the firearm that fired the fatal shots.
- [5.10.2.3] A total of 129 spent cartridge cases were found littered throughout the house and environs. There were seventy-seven 7.62mm or .308 cases, twenty-one 5.56mm or .223 cases, twenty-six .22 cases, four twelve gauge shotgun shell cases and one .38 case.
- [5.10.3] Dr Wevers also identified the Llama brand revolver which fired cartridges of 0.38 Special calibre. Dr Wevers was of the opinion that it was the Llama revolver located on the bed adjacent to the body of Jan Molenaar which fired the bullet which caused his death.
- [5.10.4] Dr Wevers identified bullet fragments adjacent to what he termed "*the back door*" of 41 Chaucer Road. These were the bullets fired by AOS members. Two shots were confirmed.
- [5.11] ANTHONY MOORE of Napier, a motor mechanic (Tony Moore), appeared to give evidence on his own behalf and, as he had not made a formal statement to the Police in spite of requests for same, gave an oral statement.
- [5.11.1] Tony Moore knew of a firearms incident at Chaucer Road five or seven years ago. Tony Moore said that he knew the shots were fired by Jan Molenaar and that he did not consider that the shooting was adequately investigated by the Police.



- [5.11.2] Jan Molenaar told Tony Moore, some years ago, that he was importing large capacity magazines and plastic grips and other fittings for guns that would turn them into military style weapons. One of three shipments was seized by Customs. Tony Moore understood, at the time, that Jan Molenaar held an appropriate licence, but thought that there may have been some difficulty with Jan Molenaar and his relicensing under the amended Arms Act in that Jan Molenaar objected to paying additional fees for a new licence when he had a "lifetime licence".
- [5.11.3] Tony Moore doubted the evidence provided by ESR witnesses as to shots fired and their trajectory specifically relating to the shots which struck Constable Snee, Constable Diver and Constable Miller.
- [5.11.4] Tony Moore went on to express doubt as to the events recorded by the police, specifically quoting a person with whom he had had discussion, one Garry Fraser. Tony Moore continued also to express doubt as to the ESR and police versions of events. Tony Moore quoted the Jan Molenaar telephone discussion with himself to the effect that Jan Molenaar said that he had been shot twice by the Police. Tony Moore acknowledged that this was not evidenced in the Autopsy Report.
- [5.11.5] In cross-examination by counsel, Mr Collins, Tony Moore made a number of additional comments, but in the final analysis when choosing which version of the evidence to prefer, I adopt the evidence given to the Inquest by the Police.
- [5.12] THE DEPARTMENT OF LABOUR, pursuant to its obligations and powers under the Health and Safety in Employment Act 1992 (HSE Act), conducted an investigation into the shooting of Constable Snee, Constable Miller and Constable Diver, resulting in their death or injury.
- [5.12.1] Section 7, HSE Act requires the police to ensure that there is in place an effective systematic method for identifying new and existing hazards to its employees whilst at work and sections 8-10 HSE Act requires the Police to take

all practical steps to eliminate significant hazards, isolate significant hazards when they are impracticable to eliminate and minimise significant hazards where they are impracticable to eliminate or isolate. There are other obligations on the Police; the Commissioner of Police having the rights, duties and powers of their employer, including providing appropriate equipment and training.

[5.12.1.1] PAUL WEST, the author of the Investigation Report by the Department of Labour attended the Inquest and produced the Report as an exhibit.

[5.12.1.2] The Department of Labour Report identified what was considered to be organisational procedures which were not followed in the planning and execution of the search warrant.

The Department of Labour specifically identified issues during its investigation "*staff failing to wear personal protection equipment*", (in particular the stab resistant body armour (SRBA)), planning and briefing.

[5.12.1.3] PLANNING:

All three Constables involved in the search at 41 Chaucer Road, Napier, on the 7th May 2009 were very experienced, but appear to have embarked upon the execution of the warrant and the Department of Labour commented on the possibility that the safety of the searchers was compromised due to the non-availability of other officers to attend on the scheduled date.

[5.12.1.4] The Department of Labour Report commented that Police communications was not aware that the search was to be carried out. The difficulty of Police radio traffic being able to be intercepted by civilian radio scanners was identified.

[5.12.1.5] SUPERVISION:

The Department of Labour Report ascertained that only one of the Sergeants who were supervisors of the three Constables involved in the incident was aware

that a drug warrant was to be executed at 41 Chaucer Road, Napier, and that he did not know any details as to time and date. The other Supervising Sergeant had no knowledge of the proposed search.

- [5.12.1.6] The 'Recommendations' in the Department of Labour Report included the statements that:

*"(1) no legal action was to be taken by the Department of Labour against New Zealand Police or any Police Officer.*

*(2) That the Department of Labour engages at a national level with police in relation to staff health and safety improvements following the shooting, and*

*(3) that the Police consider implementing a search warrant risk assessment nationally".*

- [5.12.2] SUPERINTENDENT ANTHONY WEYMOUTH MCLEOD, National Manager, Operations, at PNHQ, Wellington (Superintendent McLeod), liaised on behalf of the Police with the Department of Labour. Superintendent McLeod commented upon the recommendations in the Department of Labour Report.

- [5.12.2.1] **Stab Resistant Body Armour (SRBA)**

Superintendent McLeod said that none of the three officers involved in the execution of the search warrant were wearing SRBA, which was in contravention of Police General Instructions (GI). It was the responsibility of Constable Snee to ensure that staff were fully equipped in order to minimise foreseeable hazards. None of the three Constables had made notebook entries referring to risk analysis.

- [5.12.2.2] Superintendent McLeod accepted that there was a system failure in that the officers did not wear SRBA, but pointed out even if they had, it would not have protected them from the firearms used by Jan Molenaar.

- [5.12.2.3] The Department of Labour Report commented upon Police who attended and recovered the wounded not wearing ballistic body armour. There is an exception to the general rule where Police attend an armed incident in that body armour is not required if the circumstances were critical. This issue is not a “*circumstance*” of either death upon which I am required to comment, but I accept that there was a “*critical*” necessity to remove the wounded from further harm.
- [5.12.2.4] Superintendent McLeod did not accept the description by Department of Labour that the tactical operations framework (TOF) was too cumbersome and that staff safety tactical training which had been initially taught over eight hours was now taught over four hours, I consider this issue too remote for me to address as a “*circumstance of the death*” of Constable Snee.
- [5.13] DETECTIVE SERGEANT EMMETT NICHOLAS LYNCH of Napier (DS Lynch) gave evidence for the police in relation to a previous firearms incident in Chaucer Road, Napier in January 2003. This was the incident referred to in the evidence of Tony Moore.
- [5.13.1] DS Lynch said that police enquiries, in 2003, established that the rifle shots which struck the house at 32 Chaucer Road were identified as coming from “*uphill in the general direction of property such as number 41 Chaucer Road*”. Although police investigated the shooting and identified a possible suspect, no prosecution followed. The possible subject was a person other than Jan Molenaar. Tony Moore, who stated that he was of the opinion that Jan Molenaar fired the shots, did not advise the Police of his knowledge at the time of the 2003 investigation.
- [5.14] DETECTIVE SUPERINTENDENT RODNEY THOMAS DREW (Superintendent Drew), was recalled at the conclusion of all previous evidence to summarise the position of the Police, particularly addressing concerns expressed by other witnesses.

[5.14.1]     **Execution of Search Warrant**

[5.14.1.1]   It is the position of the Police that the execution of the Search Warrant at 41 Chaucer Road, Napier was efficient and that personnel were going about their respective tasks in an appropriate manner. In particular, Superintendent Drew referred to the Department of Labour comment implying that there were insufficient Police present.

[5.14.2]     **Firearms Possession and Licensing**

[5.14.2.1]   The Police have addressed the concerns in relation to firearms possession by Jan Molenaar after his licence was surrendered on the 1st December 1994. Because records are no longer available and recollections are vague, there remains some uncertainty about the events. Superintendent Drew referred to evidence obtained by the Police that Jan Molenaar prior to 1994, owned a number of MSSA. Police believe that it is at least possible that Jan Molenaar divested himself of firearms at the time of the surrender of the licence, but that some, later, came back into his possession. Superintendent Drew advised of Police prosecutions of an associate of Jan Molenaar in relation to the supply to Jan Molenaar of an MSSA after 1st December 1994.

[5.14.3]     **Delwyn Keefe Evidence**

[5.14.3.1]   Superintendent Drew referred to the recollection of Delwyn Keefe in relation to what she perceived to be a very rapid arrival of Police at the scene following the shooting. The Police consider that the recall of Delwyn Keefe was inaccurate due to the traumatic circumstances of the incident.

[5.14.4]     **Siege Tactics**

[5.14.4.1]   Superintendent Drew analysed the events of the siege and the tactics adopted by Armed Offenders Squad (AOS members) and Special Tactics Group (STG members). Although not a cause of the death of Jan Molenaar or a circumstance

of his death, I comment that the firing of the shots, by AOS, at Jan Molenaar were justified in the circumstances.

**[5.14.5] Hostage Negotiation**

[5.14.5.1] The evidence of Superintendent Drew referred at length to the siege and the attempts by the negotiators to deal with the evolving situation. I will refer to this later, but note, at this time that I consider that the containment and negotiation was appropriate.

**[5.14.6] Body recovery**

[5.14.6.1] Superintendent Drew reviewed issues relating to body recovery, identification and post mortem, which I have referred to in his earlier evidence. This evidence allows me to establish the criteria required by sections 57.2(a), (b), (c) and (d) of the Coroners Act 2006.

[5.14.6.2] Although it was believed that Jan Molenaar suicided at 1.28 pm on the 8th May 2009, it was not until 11.57 am on the 9th May 2009, due to concerns at the “*bunker*” mentality of Jan Molenaar and the possibility of booby traps, that the STG entered 41 Chaucer Road, Napier. STG personnel were accompanied by Army explosive experts. A number of Improvised Explosives Devices (IED) were located and it took some time to make the property safe.

[5.14.6.3] In her submission to the Provisional Finding Delwyn Keefe questioned the time of death of Jan Molenaar and pointed to evidence on “gun shots from” 41 Chaucer Road at about 5pm, 8<sup>th</sup> May 2009. The time of death established from the text message data and the Police deployed in cordons around the property hearing a small arms shot and a groan at this time. At 5pm there were shots fired at 41 Chaucer Road by Police Officers in the STG, specifically the deployment of tear gas.

[5.14.6.4] The Police were satisfied from the evidence obtained during their search of the premises and from the post mortem examination that the cause of death of Jan Molenaar was a single self inflicted gunshot wound to the right temple.

[5.14.7] **Siege**

[5.14.7.1] Superintendent Drew referred to the comprehensive analysis by Police and ESR of the multiple gunshots fired from 41 Chaucer Road, Napier by Jan Molenaar. Superintendent Drew referred to witness statements taken by the Police from Kenneth Cooper and Kenneth Pryor in relation to the shots they observed being fired, including some that were fired at their properties. Superintendent Drew detailed the arrangements made by Police (assisted by Army) to gain access to 41 Chaucer Road, Napier identifying damage caused. It is appropriate for me to record the location by Army and Police searches of a number of IED's. I accept this evidence as a background to the disproportionate outcome of the execution of the cannabis Search Warrant. At least five IED's "*with the potential to cause significant damage ... undoubtedly intended to cause death and injury ...*", 22 military explosive Thunderflash Friction devices, intended to simulate the noise of shell fire or grenade detonation, and two military smoke grenades were located.

[5.14.8] The reconstruction by the Police found that Jan Molenaar on the morning of the 7th May 2009 had retreated to the master bedroom of the house, expecting the Police to attempt a forced entry. He created rudimentary barricades to obstruct attempts at entry by upturning and moving furniture and creating IED's. He punched holes through bedroom walls so that he could see other rooms and as gun ports to give him a field of vision in fire. In the bedroom Jan Molenaar assembled all readily available firearms, ammunitions and explosives. A total of 17 firearms and one rocket launcher were located at 41 Chaucer Road, Napier. Ten of these firearms were found in the master bedroom.

[5.14.9] **Firearms**

[5.14.9.1] The Police armourers' firearm examination report and a booklet of photographs describing each of the weapons was produced as an exhibit. A number of the firearms can be described as being MSSA and the number and nature of the firearms are far beyond what would normally be associated with a recreational sporting firearms user. The Police search located 77 .308 cartridge cases, 21 .223 cartridge cases, 26 .22 cases, four 12 gauge shotgun shell cases and one .38 case. In addition, 3,174 live bullets were located. Firearm primers, gunpowder, bullet casings, projectiles and a press were also located.

[5.14.10] Jan Molenaar had fashioned body armour in the form of a sheet of steel designed to hang over the shoulders and cover the abdomen and chest and was found to be wearing a Kevlar type body armour fashioned out of a motorcycle jacket when his body was discovered.

[5.14.10.1] The search located 22 ounce bags of cannabis head, two half ounce bags of cannabis head, 10 foil wrapped cannabis tinnies, 1,826 cannabis seeds and 25 cannabis plants, as well as \$15,000 New Zealand currency and \$5,000 in Australian currency.

[5.14.11] **Observations**

[5.14.11.1] Superintendent Drew referred in his evidence to reservations expressed by media and others during the Inquest hearing. Superintendent Drew considered that the failure by the three Police Constables to wear SRBA or to inform Comms Centre that they were executing a warrant at 41 Chaucer Road, Napier was irrelevant to the shooting. The SRBA would not have protected them from bullets fired from a high powered rifle. The Constables remained in radio contact with Comms Centre and were able to broadcast their location immediately after the first shots were fired. Constable Snee and Constable Diver in particular had AOS experience and would have been acutely aware of the dangers they may encounter executing a Search Warrant. When assessing the risk they based this



on the information available to them and did not consider it necessary to draw or carry firearms. The information known to Constable Snee and his colleagues on the 7th of May was listed by Superintendent Drew. The most significant factor was that Jan Molenaar, at the time of his death aged 51 years, did not have a serious criminal record; the last of his minor convictions was about 30 years ago. The anonymous information recorded in Intelligence was 14 years previously, unsubstantiated and not repeated.

[5.14.11.2] The closing comments of Superintendent Drew are relevant and appropriate and will be adopted and paraphrased by me in my Reasons for this Finding.

**[6] Reasons/Issues**

[6.1] It may be considered that some of the evidence given to the Inquest remains equivocal. The comments by Delwyn Keefe in relation to what she perceived to be a very prompt arrival of AOS, or other Police officers, and the advice by Garry Fraser to Tony Moore that another uniformed officer was present, are examples.

The Police have assured me that all of the concerns expressed by the public have been addressed and that the explanation for the apparent sightings was that there was an honest mistake by each observer who, particularly in the case of Delwyn Keefe, was traumatised by the events and had an imperfect recall of facts and time.

[6.2] The Police have enquired about the role of Detective Sergeant Moorhouse referred to by Delwyn Keefe as possibly being able to assist. I am told that Detective Sergeant Moorhouse was acquainted with Jan Molenaar and Delwyn Keefe, but did not have a friendship with them that would disqualify him from assisting with negotiations.

[6.3] I am satisfied that the conduct of the siege was in accordance with Best Practice and that the suicide by Jan Molenaar was unable to be prevented.

- [6.4] Although I agree that more Police at the time of the execution of the Search Warrant may have had the outcome of more shooting victims, it is clear that the presence of an extra Police officer may have avoided the tragic outcome. Constable Snee could not adequately control Lenny Holmwood, Delwyn Keefe and Jan Molenaar and it would have been better if a Police Constable had accompanied Jan Molenaar when he left the room. I am confident however that the lessons learnt from the tragic death of Constable Snee will result in a reappraisal of Police officer safety in the execution of similar Warrants in the future.
- [6.5] The major failing which led to both of the deaths is the lack of appropriate intelligence. I recall some years ago a publicity programme "*Speak Up – Call The Police*" and I note also current initiatives for the public to refer suspicious matters to an Agency established for this purpose.
- [6.6] What is now clear is that Jan Molenaar had been growing cannabis and selling it to a number of people in Napier. The growing of and use of cannabis is illegal. Any person who knew that Jan Molenaar was "*dealing*" owed a duty and a responsibility to report this to the Police. Intelligence relies on public support.
- [6.7] A number of people in Napier, and elsewhere, also knew that Jan Molenaar owned and held firearms. Of the 17 weapons located in the search of the property, six are pump action or semi automatic shotguns adapted to be held in one hand; there was one pistol, two military rifles of high calibre and three Ruger mini-14 semi automatic rifles, (two of .223 calibre and one of .22 calibre) – (MSSA's) none of which could be seen as having any legitimate sporting or recreational use. There were also four hunting rifles and one shotgun, all of which would have a sporting or recreational use.
- [6.8] The Police have attempted to establish a source for each of these firearms.

It has been found that a number of them were acquired by Jan Molenaar from non legitimate sources. Each of the suppliers to Jan Molenaar of these weapons shares a responsibility for the death of Constable Snee. If those supplying firearms ascertained, as they were required to do, under the Arms Act, that Jan Molenaar held an appropriate firearms licence, this would have been conveyed to Police Intelligence and Constable Snee and his companions would have been warned of the danger Jan Molenaar presented.

[6.9] A number of persons, including some who gave evidence to the Inquest hearing, knew that Jan Molenaar would be upset by the entry of Police onto his property, the search for drugs and firearms and, more significantly, the resultant loss of his money and assets. Each and every person who knew, or considered it possible, that Jan Molenaar would react in a violent manner or in a way the Police may have considered to be unpredictable, owes a responsibility to report their concerns to the Police. There is a matter of enduring regret that this did not occur.

[6.10] **Comment on Department of Labour Report**

It is appropriate for me to refer to the Department of Labour Report and acknowledge that the concerns expressed in the Department of Labour “*Conclusions*”, have been addressed by Superintendent Drew and by Superintendent McLeod.

In commenting upon the “*broader issues*” raised in the Report and whilst acknowledging the response of the Police, I remain of the opinion that the wearing of SRBA ought to remain mandatory. Whilst I accept the fact that the garments would not have protected the Police Constables from the wounds they received on 7<sup>th</sup> May 2009, the wearing of SRBA may have created in the mind of Jan Molenaar a greater degree of authority for the Police and may have resulted in a further hesitation by him before he decided to commence shooting.

In commenting upon the Provisional Finding the Police confirm the wearing of SRBA by frontline staff in the NZ Police is **mandatory** and was so at the time of this incident.

- [6.10.1] The Department of Labour Report mentions the various risk assessment forms available to Police. Whilst I accept the observation by the Department of Labour that the individual Constables did not conduct an appropriate written risk assessment for the execution of the search warrant, even if they had, it probably would not have identified, from the intelligence then available to them, the risks that Jan Molenaar presented.
- [6.10.2] Superintendent McLeod advised that a more detailed operational risk assessment and minimisation model was being adopted. I will refer to this further under Recommendations.
- [6.10.3] Whilst I accept that Police Constables, particularly in sole charge situations, exercise a significant degree of autonomy, there are clear lines of reporting, recording and responsibility, which ought to have been followed. The fact that reporting to their immediate supervisors was not undertaken by any of the Constables did not, however, in my view, contribute to the outcome and cannot be said to be a circumstance of the death. A command structure and plan approval by a senior officer may have identified hazards before they were encountered.
- [6.10.4] In response to the comment by Department of Labour that the management of the scene and suspects by the three Police officers on the 7th May 2009 was “casual”, Inspector McLeod advised that PNHQ is reviewing this. This aspect, will also, be referred to further under my Recommendations.
- [6.10.5] Superintendent McLeod accepted that Constable Snee, Constable Miller and Constable Diver did not advise their location and the purpose of their task to Police communications as required by the appropriate protocols and General

Instructions (GI). I understand that there was, and is, a reservation by the Police in communicating on what are effectively open radio channels in case such communication would compromise their safety. Superintendent McLeod advised that the introduction of digital portable radios will address safety concerns and likely promote more direct and effective communication.

[6.10.6] Superintendent McLeod agreed with the Department of Labour, as do I that the fact that the National Intelligence Application (NIA) was not updated with notings by other staff that had recently had dealings with Jan Molenaar and Delwyn Keefe in April 2009, is impossible to assess.

[6.10.7] Superintendent McLeod summarised in his commentary on the Department of Labour Report that in his view the Police took appropriate steps to ensure the safety of the three Police Constables during their employment, and repeats the observation that the response by Jan Molenaar was totally disproportionate to the seriousness of the incident. As already stated, I agree.

[6.11] Superintendent McLeod advised that Police are addressing matters of concern by putting in place protocols to:

1. Ensure all supervisors are aware of all Warrants being executed by their staff.
2. Ensuring adequate numbers of staff attend the execution of Search Warrants.
3. Providing improved risk assessment training and tools that are simple to use.
4. Monitoring staff use of personal protection equipment.

[6.12] During questioning at the conclusion of the evidence-in-chief of Superintendent McLeod, I did observe that there must be a difficulty for serving police officers to be aware of all GI which affect them. I do not consider it possible for every individual Police Officer to know and understand the effect of every GI. I was advised of a consolidation which was being undertaken by PNHQ. This will be referred to further under Recommendations.

[6.13] In agreeing with the Department of Labour Report I record that I have mentioned earlier my reservations about the number of Police Constables involved in the execution of the warrant. I again recognise that Superintendent McLeod and Superintendent Drew have addressed the issue, but restate my view that the outcome may have been different if one or more of the other constables who had been requested to attend had accompanied the others.

**[7] Recommendations**

I recommend that a copy of this Finding be forwarded to the Commissioner of Police and to the Minister of Police with a request that:

[7.1] The Arms Act be reviewed.

I have had drawn to my attention the decision of Mallon J in *Lincoln v Police*. The evidence I received at the Inquest hearing and this decision identify deficiencies in the legislation and in the enforcement of it. The policy of tracking MSSA's and confirming the type of firearm that is a MSSA must be looked at again. The Thorpe Report may have to be revisited. At present the Arms Act is only complied with by honest people.

[7.2] The roll-out of Police digital radios be expedited. Now that appropriate technology exists our Police ought never to be put in the situation of hesitating to use an unsecure channel.

[7.3] The programme of review and simplification of Police "*General Instructions*" ought to receive prompt attention. No serving Police Officer can be expected to have instant recall to each, and every, GI.

[7.4] Procedures for the execution of all Search Warrants by the Police be upgraded to ensure that:

(1) All supervisors are aware of Warrants being executed by their staff.

- (2) Adequate numbers of Police Officers attend the execution of Search Warrants.
- (3) There are improved tools and equipment available to staff and that appropriate training in risk assessment and other tasks is given.
- (4) There is a continuing monitoring of staff in their use of personal protection equipment.

**[8] Finding**

[8.1] I FIND THAT: Senior Constable Leonard Snee then a serving Police Officer of Napier, died on the road outside 41 Chaucer Road, Napier, on the 7th May 2009 as a result of wounds from gunshots which were fired by Jan Miense Molenaar.

[8.2] I FIND THAT: Jan Miense Molenaar of Napier, unemployed, suicided at 41 Chaucer Road, Napier, on the 8th May 2009. The cause of his death being a single bullet wound to the head which was self inflicted.

[8.3] My Reasons for these Findings are as outlined in "*Evidence*" and "*Issues/Reasons*".

**[9] Conclusion**

[9.1] I acknowledge the assistance given by counsel and by the witnesses involved with these Inquests.

[9.2] I extend my sympathy to Mrs Vicky Snee and her sons, to their extended family and friends, and to the Police for their loss.

[9.3] I extend my sympathy to Mrs Annabella Molenaar, Ms Delwyn Keefe and to their extended family and friends for their loss.

[10] **Orders**

[10.1] Pursuant to sections 71, 73 and 74 of the Coroners Act 2006 (Act) and my further powers, I direct that the following evidence not be "*made public*" as defined by the Act and be sealed on file:

- The name of the deceased brother of Jan Molenaar.

[10.2] Pursuant to section 74 of the Act, it being in the interests of justice, public order and personal privacy I order that none of the following is to be "*made public*":

1. No detail of the name or rank of any member of the Police Armed Offenders Squad or Police Special Tactics Group.
2. The name of the Police Officer mentioned in page 3, 3<sup>rd</sup> paragraph of the Statement of Evidence of Inspector Burdette.
3. The seventh paragraph on page 3 of the Statement of Evidence of Inspector Burdette relating to procedures adopted by PNT.
4. Extracts from the deposition, dated 1 April 2010, of Superintendent Drew, specifically:
  - Page 30, paragraphs 3 to 6;
  - Page 31, paragraphs 2, 3 and 10;
  - Page 32, paragraph 1;
 relating to the "*siege*".
5. The evidence of Superintendent Drew on pages 40 and 41 of his deposition, as same relate to Delwyn Keefe.

I will ask that this evidence be separated from the file and sealed as "*sensitive material*".



**[10.3] Pursuant to section 71 (3) of the Coroners Act 2006, being satisfied that the making public of particulars of the death of Jan Molenaar is unlikely to be detrimental to public safety, I authorise the publishing of this Finding or edited extracts from it and evidence given at the Inquest hearing, apart from that covered in my preceding Orders.**

### **Addenda**

Since the circulation of the Provisional Finding I have received submissions from the Police and from Delwyn Keefe.

The forwarding of a Finding on a provisional basis, to parties to an Inquest, is intended to address the obligations of a Coroner to observe section 58 of the Coroners Act 2006, which refers to a Coroner who makes adverse comment concerning a person, or organisation, or about a deceased person. Some of the submission of Delwyn Keefe effectively asks that I reconsider evidence. There is no opportunity for me, or obligation on me, to do so. Delwyn Keefe has asked that I obtain further information which is relevant to correct what could have otherwise been errors of fact. These issues have been addressed, to the extent I have been prepared to do so, in the Formal Finding. Some of the observations made by Delwyn Keefe in her submission relate to concerns in relation to the execution of the Search Warrant and go beyond what I consider to be "*circumstances of the death*" of Jan Molenaar, but I have done my best to facilitate a response to her concerns.

Signed by the Coroner at Dunedin this 31<sup>st</sup> day of August 2010.

David Crerar  
Coroner

Reply to: Kenepuru Science Centre

**ESR**



Institute of Environmental  
Science & Research Limited  
Kenepuru Science Centre  
34 Kenepuru Drive  
PO Box 50-348, Porirua  
New Zealand  
• tel: +64 4 914 0700  
• fax: +64 4 914 0770

Mt Albert Science Centre  
Hampstead Road, Mt Albert  
Private Bag 92-021, Auckland  
New Zealand  
• tel: +64 9 815 3670  
• fax: +64 9 849 6046

Christchurch Science Centre  
27 Creyke Road, Ilam  
PO Box 29-181, Christchurch  
New Zealand  
• tel: +64 3 351 6019  
• fax: +64 3 351 0010  
• <http://www.esr.cri.nz>

15 September 2009

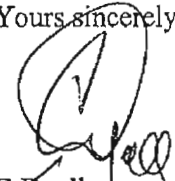
David A. Wood  
Barrister  
3 King George Place  
Timaru 7910

Dear Mr Wood

### **DAVID GRAY MURDERS AT ARAMOANA**

We refer to your letter dated 31 August 2009 in respect of the above matter and enclose copies of reports prepared by the former Department of Scientific and Industrial Research.

Yours sincerely



G. Dyall  
General Counsel



NEW ZEALAND  
DEPARTMENT OF  
SCIENTIFIC AND  
INDUSTRIAL  
RESEARCH



## FORENSIC REPORT

**ATTENTION:** Detective Chief Inspector P Robinson  
**RELATING TO:** Operation Aramoana  
**OUR REFERENCE:** U 8186

### SCENE VISIT

#### General

On 14 November 1990, at the request of Detective Chief Inspector P Robinson, DSIR scientists travelled to Dunedin to assist the Police at a scene where thirteen people had been killed and two had been wounded.

On 15 and 16 November 1990 I assisted a number of Police officers in the examination of several scenes in the Aramoana township.

#### 14 Poto Street

At this scene I discussed with Detective Sergeant G Binney the trajectory of the bullets which made the holes in the house at 14 Poto Street. I showed him how to establish whether the bullet was fired into or from the house. I also examined very briefly several .223 calibre cartridge cases and noted that those examined had an indentation about half way along the

case. This feature was shown to Detective Sergeant Binney and would assist him in determining whether other .223 calibre cases, found at this scene, could have been fired by the same firearm.

#### **25 Muri Street**

I assisted Detective N Aiken in examining the kitchen at this address. The window had been broken. It appeared that a bottle found on the kitchen floor had broken the window. A sample of the liquid on the floor was collected and retained by Detective Aiken.

#### **27 Muri Street**

At this address I discussed with Detective J Edge the collection of various items. I assisted in removing an ammunition box from the refrigerator.

#### **Truck, Registration Number OR 1748**

This truck was parked outside 27 Muri Street. I assisted Detective Sergeant P Gibbons in the collection of various blood samples. I also discussed with him the trajectory of the bullets and assisted in the location of one bullet in the back board of the tray of this truck.

#### **29 Muri Street**

Detective Sergeant M Galland was in charge of this scene which consisted of a burnt down house. The roofing iron had fallen on top of the burnt material from the house.

cont.

COPY 

Because two bodies were still unaccounted for, the roofing iron was removed section by section. The exposed ash was carefully screened with the view of finding body remains, any identifying items and bullet fragments.

Two skeletons were located. By one I found what appeared to be an earring. By the other, bangles and a bone carving were found. No bullets were found.

The intensity of the heat in the house was such that a row of books found in one area of the house had been completely turned to white ash. The general shape of the books could still be seen. In view of the heat that had been generated by the fire and contained by the roofing iron, no samples were collected to establish whether any accelerant had been used.

#### RECEIPT OF ITEMS

On 10 December 1990 I received from Mr R Ngamoki, Police Armourer, Wellington, the following:-

Item 28	One .38 S & W pistol
Item 203	One .22 calibre Vickers rifle
Item 205	One .22 calibre Squires Bingham rifle
Item 206	One magazine with four rounds in it
Item 207	One 7.62 x 39 SKS rifle
Item 228	One .223 calibre Norinco rifle and 28 rounds of .223 ammunition
Item 241	One Chinese air rifle
Item 250	One .22 calibre Winchester rifle
Item 312	One .22 calibre Remington rifle
Item 315	One box of .22 calibre ammunition
Item 318	One empty magazine

cont.

COPY 

On the same day I received from Mr Ngamoki a number of bullet fragments. The fragments were removed from the following people:-

Leo WILSON (Item 26)  
James Alexander DICKSON (Item 74)  
Magnus JAMIESON (Item 133)  
Ross James PERCY (Item 157)  
Victor James CRIMP (Items 274 and 275)  
Garry John HOLDEN (Items 276 to 278, 366)  
Chiquita HOLDEN (Item 279)  
Stacey PERCY (Item 280)  
Vanessa Grace PERCY (Items 340 to 346)  
Dion Jack PERCY (Item 357)

## EXAMINATION

### General

I examined the submitted bullet fragments with the view to establishing which firearm fire the bullets.

### **.22 Calibre Bullet Fragment**

The bullet removed from Chiquita Holden (Item 279) is of .22 calibre and has marks on it which have been made by the rifling of a firearm.

I test-fired the Squires Bingham and Remington .22 calibre rifles (Items 205 and 312) and recovered the bullets. I compared marks on the test fired bullets with corresponding marks on the bullet from Chiquita.

cont.

COPY *hr*

This comparison indicated to me that the bullet from Chiquita Holden had been fired by the Squires Bingham rifle (Item 205). The bullet has not been fired by the Remington rifle (Item 312).

### **.223 Calibre Bullet Fragments**

Among the fragments from Dickson, Jamieson, Crimp, Garry Holden and Stacey Percy I found partial bullets (Items 74, 133, 274, 280 and 366) with marks on them made by a firearm. The appearance of these bullet fragments indicated to me that the bullets from which they came were of .223 calibre.

I test-fired the .223 calibre Norinco rifle (Item 228) and recovered the bullets. I compared the marks on the bullet fragments with corresponding marks on the test bullets. This comparison indicated to me that these fragments (Items 74, 133, 274, 280, and 366) were part of bullets fired through the Norinco rifle (Item 228).

### **Bullet Fragments**

The fragments from Leo Wilson (Item 26), Ross Percy (Item 157), Vanessa Percy (Items 340 to 346) and Dion Percy (Item 357) have been sent to DSIR, Gracefield for metal analyses. There may be sufficient differences between the .22 and .223 calibre ammunition to establish from which source these fragments have come.

COPY<sup>cont.</sup>  
*km*

**CONCLUSION**

1. The following people were killed by bullets fired through the .223 calibre Norinco rifle:-

James Alexander DICKSON

Magnus JAMIESON

Victor James CRIMP

Garry John HOLDEN

2. The bullet which injured Stacey PERCY was fired through the .223 calibre Norinco rifle.
3. The bullet which injured Chiquita HOLDEN was fired through the .22 calibre Squires Bingham rifle.

*P. R. Hentschel*  
P R Hentschel  
Scientist

*21 December 1990*

COPY  
*hm*





NEW ZEALAND  
DEPARTMENT OF  
SCIENTIFIC AND  
INDUSTRIAL  
RESEARCH

DSIR  
Chemistry

GCL 394


Allan Ross GAINSFORD states:

Since 1976 I have been employed by DSIR Chemistry at Gracefield, Lower Hutt, where I have specialised in Metal Analysis and am the principal Metals Analyst. I have the degrees of Bachelor of Science in Chemistry and Doctor of Philosophy in Inorganic Chemistry, both from the University of Canterbury, Christchurch.

I am a member of the New Zealand Institute of Chemistry.

On 18 December 1990, I received, by hand from Dr M C Taylor, the following Exhibits and Control Bullets:

- |             |   |
|-------------|---|
| Exhibit 26  | A plastic jar containing three grey metal fragments.  |
| Exhibit 157 | A plastic jar containing three pink/yellow metal fragments.   |
| Exhibit 340 | A plastic petri dish containing one grey metal fragment.  |
| Exhibit 341 | A plastic jar containing two grey metal fragments.  |
| Exhibit 342 | A plastic jar containing one pink/yellow metal fragment.  |
| Exhibit 343 | A plastic jar containing one grey metal fragment.   |
| Exhibit 344 | A plastic jar containing one pink/yellow metal fragment, 4 grey metal fragments and six other non-metallic fragments. |

  
3rd January 1991  
Lower Hutt  
Gracefield Road, Lower Hutt, Private Bag, Pone, Telephone (04) 666 919, Facsimile (04) 694 500

COPY   
Page 1 of 4

- Exhibit 345            A plastic jar containing one pink/yellow metal fragment and two grey metal fragments.
- Exhibit 346            A plastic jar containing one pink/yellow metal fragment.
- Exhibit 357            A plastic jar containing one grey metal fragment.

**Control Bullets**

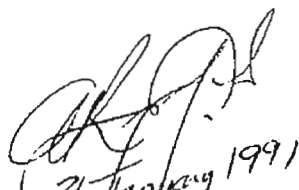
- Item 288 CJ8           A plastic bag containing four solid-point projectiles ex 0.223 CJ8 Brand.
- Item 288 PMC           A plastic bag containing two hollow-point projectiles ex 0.223 PMC Brand.
- Item 315                A plastic bag containing five intact Norinco 0.22 LR Standard cartridges.

To facilitate the analyses, the following operations were performed on the control bullets:

- the Copper alloy jacket of each projectile in Item 288 CJ8 and Item 288 PMC was slit in half revealing grey filler metal.
- the grey metal projectiles were extracted from the Item 315 cartridges.

Visually, the Copper alloy jackets from Item 288 CJ8 are composed of a yellow metal (a "Brass") whose surfaces have been electroplated with a pink/red metal (Copper). In contrast, the Copper alloy jackets from Item 288 PMC are composed of a pink/yellow metal (a different "Brass") whose surfaces have been electroplated with a pink/red metal (Copper).

COPY 

  
1-21-1991

All of the metal fragments from the exhibits were mounted in pure graphite.

The mounted metal fragments and the metal components from the Control Bullets have been analysed using quantitative spark emission spectrometry. The analytical techniques used give precise element compositions for alloying, minor and trace elements without total destruction of the metal.

The comparison bullets analyse as follows:

- Item 288 PMC. The jacket material is a Brass containing Zinc (5.4%), traces of Tin, Lead and Iron, the balance being Copper. Each jacket is electroplated with pure Copper. The filler metals are Lead alloys; the principal alloying element is Antimony (content range of 1.51 - 1.57%) together with minor (Bismuth, Tin, Arsenic and Copper) and six other trace elements.
  
- Item 288 CJ8. The jacket material is a Brass containing Zinc (10.3%), traces of Tin, Lead and Iron, the balance being Copper. Each jacket is electroplated with pure Copper. The filler metals are Lead alloys; the principal alloying element is Antimony (content range of 1.13 - 1.30%) together with minor (Bismuth and Copper) and eight other trace elements.
  
- Item 135. The projectiles are Lead alloys; the principal alloying element is Antimony (1.02 - 1.23%) together with ten other trace elements.

*[Handwritten signature]*  
3 January 1991

COPY *[Handwritten mark]*

There is considerable overlap between the Item 288 CJ8 and Item 135 Lead alloy Antimony compositions but the difference in the minor element contents (Copper and Bismuth) just enables a differentiation between these Items.

All of the grey metal fragments from the analysed Exhibits are Lead alloys containing Antimony (1.01 - 1.35%) with Copper and Bismuth as minor elements and eight other trace elements. All of these fragments are the remains of filler metals from projectiles similar to the Item 288 CJ8 Control Bullets.

All of the pink/yellow fragments from the analysed Exhibits are the remains of the Copper alloy jackets from projectiles similar to the Item 288 CJ8 Control Bullets.

None of the metal fragments from the analysed Exhibits are associated with projectiles similar to those of Item 288 PMC and Item 135.

The Exhibits and Items have been retained at this laboratory awaiting further instructions.

This statement is true to the best of my knowledge and belief. It is made by me knowing that it may be admitted as evidence in a preliminary hearing and that I could be prosecuted for making a statement known by me to be false and intended by me to mislead.

  
A.R. Gainsford

31 January 1991

COPY

**New Zealand Legislation: Acts**

Acts are laws made by Parliament

[newzealand.govt.nz](http://newzealand.govt.nz)PARLIAMENTARY  
COUNSEL OFFICE  
TE TARI TOHUTOHU  
PAREMATA**Reprint as at 1 August 2010****Arms Act 1983**

Public Act 1983 No 44

Date of assent 29 November 1983

Commencement see section 1(2)

**Note**

Changes authorised by [section 17C](#) of the Acts and Regulations Publication Act 1989 have been made in this reprint. A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the New Zealand Police.**

**Contents**

	<u>Title</u>
<u>1</u>	<u>Short Title and commencement</u>
<u>2</u>	<u>Interpretation</u>
<u>3</u>	<u>Act to bind the Crown</u>
<u>4</u>	<u>Power to declare weapons to be restricted weapons or specially dangerous airguns</u>
	<i>Licensed dealers</i>
<u>5</u>	<u>Dealers to be licensed</u>
<u>6</u>	<u>Dealer's licence to be personal to holder</u>
<u>7</u>	<u>Place of business</u>
<u>7A</u>	<u>Gun shows</u>
<u>8</u>	<u>Duration of dealer's licence</u>
<u>9</u>	<u>Revocation of dealer's licence</u>
<u>10</u>	<u>Restriction on possession of pistol or restricted weapon by licensed dealer</u>
<u>11</u>	<u>Dealers and their employees and agents to hold firearms licences</u>
<u>12</u>	<u>Record of dealings by licensed dealers</u>
<u>13</u>	<u>Seizure of firearms, ammunition, airguns, pistols, and restricted weapons held by licensed dealers</u>
<u>14</u>	<u>Disposal of firearms, ammunition, airguns, pistols, and restricted weapons of dealer whose licence is revoked</u>
<u>15</u>	<u>Offence for licensed dealer to carry on business following revocation of his licence</u>
	<i>Importation of firearms</i>
<u>16</u>	<u>Offence to import firearms or parts of firearms without permit</u>
<u>17</u>	<u>Burden of proof</u>
<u>18</u>	<u>Issue of permits to import firearms or parts of firearms</u>
<u>18A</u>	<u>Expiration of permits to import firearms or parts of firearms</u>
<u>18B</u>	<u>Samples</u>
<u>19</u>	<u>Seizure of illegally imported firearms or parts of firearms</u>
	<i>General restrictions on possession of firearms and airguns</i>
<u>20</u>	<u>Restrictions on possession of firearms</u>
<u>21</u>	<u>Restrictions on possession of airguns</u>
<u>22</u>	<u>Exemptions</u>
	<i>Firearms licences</i>
<u>23</u>	<u>Application for firearms licence</u>
<u>24</u>	<u>Issue of firearms licence</u>
<u>25</u>	<u>Duration of firearms licence</u>

- 26 Production of firearms licence
- 27 Revocation and surrender of firearms licence
- 27A Domestic violence and firearms licences
- 28 Effect of revocation or surrender of firearms licence
- 29 Application for endorsements in respect of pistol or restricted weapon
- 30 Power to make endorsement in respect of pistols or restricted weapons
- 30A Application for endorsement in respect of military style semi-automatic firearm
- 30B Power to make endorsement in respect of military style semi-automatic firearm
- 31 Possession of firearm, pistol, military style semi-automatic firearm, or restricted weapon for stage, film, or television purposes
- 32 Conditions of endorsements
- 33 Revocation of endorsements
- 33A Conditions of endorsement in respect of military style semi-automatic firearms
- 33B Revocation of endorsement in respect of military style semi-automatic firearms
- 34 Notification of change of address

Photographs

- 34A Power to require or take photographs of applicants
- 34B Effect of non-compliance with requirements in relation to photographs or to calling-in of licences

Permits to procure pistols and restricted weapons

- 35 Issue of permit to procure pistol, military style semi-automatic firearm, or restricted weapon
- 36 Offence to carry pistol or restricted weapon without authority
- 37 Surrender of restricted weapon
- 38 Removal of pistol, military style semi-automatic firearm, or restricted weapon out of New Zealand

Miscellaneous obligations in respect of firearms, airguns, pistols, and restricted weapons

- 39 Loss, theft, or destruction
- 40 On demand by Police person in possession of firearm, airgun, pistol, or restricted weapon to give name, address, and date of birth
- 41 Powers of Police to require surrender of airguns or antique firearms

Offences

- 42 Offences in respect of licences
- 43 Selling or supplying firearm or airgun to unlicensed person
- 43A Mail order sale of firearm or ammunition
- 43B Restriction on sales of ammunition
- 44 Selling or supplying pistol, military style semi-automatic firearm, or restricted weapon to person who does not hold permit to import or to procure
- 45 Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose
- 46 Carrying of imitation firearm, except for lawful, proper, and sufficient purpose
- 47 Being in charge of firearm, airgun, pistol, or restricted weapon while under the influence of drink or drug
- 48 Discharging firearm, airgun, pistol, or restricted weapon in or near dwellinghouse or public place
- 49 Using, discharging, or carrying certain firearms except for some lawful, proper, or sufficient purpose
- 49A Unlawful possession of firearm or airgun after revocation of firearms licence
- 50 Unlawful possession of pistol, military style semi-automatic firearm, or restricted weapon
- 51 Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon
- 52 Presenting firearm, airgun, pistol, or restricted weapon at other person
- 53 Careless use of firearm, airgun, pistol, or restricted weapon
- 54 Use or attempted use of firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive to resist or prevent arrest or commit offence
- 55 Carrying firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive with criminal intent
- 56 Obstruction of member of Police
- 57 Offences committed by corporations
- 58 Reporting of injuries caused by firearms, airguns, pistols, or restricted weapons
- 59 Unsafe firearms or pistols

Search and seizure of firearms

- 60

Search of suspected persons and seizure of firearms, airguns, pistols, imitation firearms, restricted weapons, ammunition, or explosives

60A Search of suspected persons and seizure of firearms in cases of domestic violence

61 Search of land or buildings for firearms, airguns, pistols, imitation firearms, restricted weapons, ammunition, or explosives

*Appeals*

62 Right of appeal from official decisions

63 Appeal to District Court Judge in respect of compensation

64 Appeal on a question of law

*Restoration of articles seized*

65 Restoration of articles seized

*Foreign personal protection officers*

*[Repealed]*

65A Interpretation [Repealed]

65B Power to authorise foreign personal protection officer to carry and have possession of firearms, etc [Repealed]

65C Power to permit temporary importation of firearms, etc, by foreign personal protection officer [Repealed]

65D Grounds for issue of written authority or written permit [Repealed]

65E Conditions of written authority or written permit [Repealed]

65F Inspections [Repealed]

65G Power to revoke [Repealed]

65H Expiry of sections 65A to 65G

*Miscellaneous provisions*

66 Occupier of premises or driver of vehicle deemed to be in possession of firearm, airgun, pistol, imitation firearm, restricted weapon, or explosive found therein

67 Liability of principal for acts of agent, etc

68 Time for prosecutions not limited

69 Forfeitures

70 Authorising disposal of firearms, etc, detained by Police

71 Protection of persons acting under authority of this Act

72 Delegation of powers by Commissioner

72A Service of documents

73 Savings in respect of carriers and persons authorised to exercise powers of seizure

74 Regulations

75 Consequential amendment to Summary Proceedings Act 1957

76 Consequential amendments to Trespass Act 1980

77 Repeals

78 Transitional provisions

Schedule

Enactments repealed

Arms Amendment Act 1992

Reprint notes

**An Act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons**

<http://www.police.govt.nz/news/release/25304.html>

## Police welcome Coroner's Report on Napier Tragedy - action on recommendations already underway

3 September, 2010 - 17:39

Police National Headquarters today welcomed the report of the Coroner into the deaths of Senior Constable Len Snee and Jan Molenaar in Napier in May 2009.

Superintendent John Rivers, of the Operations Support Group, said that Police wished to once again express sympathies to all the families involved in this tragedy.

Police noted that the Coroner had agreed with the organisation's view that the reaction of Jan Molenaar to what was a routine search was extreme and totally out of proportion. Any actions by Police were not the cause of the death of Senior Constable Snee but were incidental to it. Jan Molenaar murdered Senior Constable Snee and then took his own life.

Mr Rivers said Police were already acting on all the recommendations made by the Coroner.

"Police will shortly be recommending policy changes to the Minister concerning the Arms Act.

"Police has given careful consideration to the recommendations of the Thorpe Report. Many of them form part of current police practice, although not necessarily expressed in legislation.

"The Thorpe Report recommended the banning of all MSSAs, including those in sporting configuration which are currently classed as Category A firearms. When the Arms Amendment Act 1992 was being developed, a total ban of MSSAs was rejected as this would not necessarily solve the problem as there were already around 12,000 - 15,000 such weapons in the country including legitimate users such as deer hunters and shooting competitors. The outcome was to treat MSSAs the same as pistols and restricted weapons.

"With regard to digital radio the national rollout of digital radio has already begun. Wellington and Wairarapa have been operating on the digital system since June 2009. By the end of this year greater Auckland and Canterbury will be switched over to the new system. Proposals are being advanced to ensure the remaining parts of the country are cut over to digital radio by 2014. This is a complex, technical solution and it is being implemented as quickly as possible.

"The review of Police General Instructions is being implemented through the Corporate Instruments Project. This project began in 2008 and is almost complete. The review of the Operational GIs is 97% complete.

"The review of development of options relating to operational risk assessments is included in the substantial programme of work that has been instigated by the Commissioner. Since the shootings of Sergeant Wilkinson and Senior Constable Snee there has been a much closer assessment of risks taken into account throughout the organisation when planning the execution of search warrants," said Superintendent Rivers.

ENDS



Stats — mess Killings

David Wood  
Supp

1st.

22 rifle

2nd

baseball bat / knife.

3rd.

single barrel shot gun.

4th.

msst.

Statistics of NZ mass killings: (assume 4 of them)

	MSSA.	.22	shotgun	knife	baseball bat.	Fire.
Grey	4	8	—	—	—	—
Rotunda					7	<del>7</del>

S. Anderson.  
(Ramin's saddle)  
6 dead  
(4 wounded)

Bain - ~~David~~ 5.

4 13. 6 7.

note Mallan J. noted 4 in Grey by MSSA. (Serg Guthrie shot by own pistol) Grey by Police.

Part of submission by David ~~wood~~