

Officer improperly influenced prosecution in Northland

Summary of the Incident

1. On 14 June 2020, Mr X was arrested for assaulting a woman outside a bar in Whāngārei. After Mr X's arrest, Officer B, a senior member of Police became involved in Mr X's prosecution. The charge against Mr X was later withdrawn.
2. An ex member of Police complained to the Authority about Officer B's involvement in Mr X's prosecution. During the course of our investigation the actions of other officers involved were also examined.

Issues examined by the Authority

Issue 1: Did Officer B influence the prosecution outcome for Mr X?

Issue 2: Did Officer B breach the conflict of interest policy by being involved in Mr X's prosecution?

The Authority's Findings

3. The Authority found Officer B improperly influenced the prosecution outcome for Mr X.
4. We also concluded that:
 - 1) Officer A's assessment of the CCTV footage was flawed; and
 - 2) his decision-making was improperly influenced by Officer B; and
 - 3) Officer B breached the conflict of interest policy. He should have referred Mr Y (Mr X's father) to another officer to address his concerns.

Analysis of the Issues

ISSUE 1: DID OFFICER B INFLUENCE THE PROSECUTION OUTCOME FOR MR X?

Initial incident

5. At about 1.00am on 14 June 2020, Mr X was standing with a group of friends outside a popular bar on Vine Street, Whāngārei. He became involved in an argument with Mr W, who was with his girlfriend, Ms V. Mr X threw a punch, which hit Ms V on the right side of her head.
6. Ms V advised nearby Police officers of this assault. She was able to point out Mr X as the person who had punched her. She later made a statement to police detailing what had happened.
7. Mr X was arrested and taken to Whāngārei Police Station. He was charged with assault on a female and bailed to appear in the Whāngārei District Court on 17 June 2020. This was the first time Mr X had been arrested.
8. The assault was recorded on closed circuit television (CCTV) cameras owned by the Whāngārei District Council and managed from Whāngārei Police Station. Police had access to the CCTV recording of the incident.
9. The following day, Mr X contacted Police to speak to the officer who had arrested him. He said he had been arrested for something he did not do and wanted to know what was happening. He was advised the officer in charge of his prosecution was away. The following day he called Police again and received the same response. That same day he went into the Police station and was told he should speak to the duty solicitor at his first court appearance.

What happened at the first court appearance?

10. At Mr X's first court appearance Officer A, a Police senior prosecutor, was approached by the duty solicitor. He explained that Mr X was concerned that he had been charged with an offence he had not committed. Officer A said he looked at the arrest file and noted Mr X had not made a statement to Police. Officer A spoke with Mr X and suggested that if he had done nothing wrong then he should make a statement, so Police had his version of events.
11. Mr X asked Officer A to save the CCTV footage because he believed it would prove Police had arrested the wrong person. He said that he had not thrown a punch but that he had a scuffle with a man and believed the woman might be confused about who had struck her.
12. Officer A made notes on the prosecution file about the conversations he had with both Mr X and the duty solicitor.
13. Later that day, Officer A emailed the arresting officer and his supervisor advising them that Mr X said he did not throw any punches. He requested that the CCTV footage from the bar be collected to clarify who hit Ms V. He said Mr X was going into the Police station that day to make a statement about what had happened.

What did Officer B do when Mr X's father initially contacted him?

14. After the court appearance, Mr X discussed his arrest with his father, Mr Y. Mr Y was concerned that Mr X was having difficulty contacting Police about the CCTV and decided to contact Officer B directly. Officer B holds a senior leadership position within the Northland District. Mr Y knew Officer B through a business connection and was aware he was a Police officer.
15. Mr Y and Officer B had a brief telephone discussion before Officer B asked Mr Y to send him an email detailing his concerns.
16. At 1.30pm on 17 June 2020, Mr Y sent an email to Officer B's Police email address, containing Mr X's version of what had occurred. Officer B told us he found it remarkable that a defendant (Mr X) had asked for Police to save the footage and thought he had better have a look at it because Police may have got it wrong. He said: *"that's my job to manage risk, to fix the things that are wrong."*
17. Mr X says: *"After my dad had spoken to [Officer B] he told me not to go and make a statement"*. Mr X telephoned Officer A and told him he had been advised not to make one. When we asked Mr Y about this, he said he could not recall a conversation with Officer B about Mr X making a statement.
18. When we asked Officer B about this, his recollection was that he told Mr Y: *"lets hang on...take this one step at a time and let's have a look at the footage and see what it reveals...come in and we will look at it and let's see what happens from there"*
19. We believe Officer B did advise Mr Y that Mr X should not make the statement at that time. Mr X had been preparing to do so and changed his mind after his father sought advice from Officer B. Despite Mr Y's inability to recall and Officer B's equivocation on the issue, we believe Mr X is unlikely to have been mistaken as to what he was told by his father given how directly the issue affected him. It was inappropriate for Officer B to have been involved in this conversation and he should not have advised that Mr X not make a statement.

What happened when Mr X and Officer B viewed the CCTV footage?

20. Officer B accessed the Police information database known as the National Intelligence Application (NIA) and looked at Mr X's prosecution file. He said he was concerned that Mr X was on a curfew,¹ and he had been into the station twice asking for the related CCTV footage to be saved, which did not appear to have been actioned.
21. On 19 June 2020, Officer B emailed the civilian volunteer who manages the CCTV within the Police station, asking for him to locate the footage that related to the arrest. This was followed up in another email on 22 June 2020. They were unable to locate the incident on the CCTV, so Officer B invited Mr Y into the station to help identify it.

¹ A curfew is a bail condition that can be applied by Police or the court which means that a person has to stay at a nominated address between prescribed hours.

22. The CCTV area is within the secure area of the Police station, to the side of where frontline officers' work stations are situated. This area is not usually accessible to members of the public.
23. Officer B, Mr Y, and his partner watched the CCTV footage but again the incident could not be identified. Officer B decided that it would be best for Mr X to come into the station to view the footage himself. We are unsure why he did not attend with his father.
24. Officer B arranged for Mr Y to return to the station on 23 June 2020, with Mr X, to view the footage. Again, this was viewed within the secure area of the station. Officer B said this was the first time he had ever taken an offender on active charges into that area of the station. He followed up by saying that although Mr X had been charged and was before the court, he did not see him as an offender.
25. Officer B's decision to allow members of the public into the Police station was outside normal practice. Police have advised that it does not breach a specific direction or guideline, but the actions were not aligned to either the disclosure or prosecution process.
26. Officer C, the sergeant who oversaw the prosecution of Mr X, noticed civilians watching the CCTV footage with Officer B. He said, although he was not aware of any policy about members of the public being within the secure areas of the station, it was unusual and, for him, was one of the areas members of the public should not have access to. He looked at the photographs of Mr X taken after his arrest and confirmed it was him he saw watching the CCTV footage.
27. After Mr X and Mr Y left the station, Officer B spoke with Officer C. Officer C said he informed Officer B it was his staff who arrested Mr X and that identity was not an issue. Officer B told him Ms V had lied in her statement to Police.
28. Officer C had not watched the footage but was on duty at the time of the incident and felt that Ms V was accurate in her description of Mr X. He told us he advised Officer B that he was confident they had arrested the right person. Officer B directed Officer C to watch the CCTV footage and to call Ms V to tell her the footage had been reviewed and there was very little evidence of an assault.
29. Officer C said Officer B advised him that Mr X was a "good kid" with no previous convictions and that Ms V had criminal convictions. Officer C corrected Officer B, advising him that Ms V had no criminal history.
30. Officer C reviewed the footage and slowed it down and showed Officer B the assault. Officer C recalled Officer B agreeing there was in fact an assault. Officer B telephoned Mr Y, advising that the CCTV footage did show an assault, and it would be best for them to go back to the station and watch it again.
31. The following day, Officers B and C met with Mr X and Mr Y and played them the footage of the assault. During the playing of the footage Officer C heard Officer B tell Mr X: "there you go mate, that's you throwing a punch, it's quite clear".

32. Officer D, the supervisor working the night Mr X was arrested, became aware that Officer B was involved in the prosecution. He thought it was “odd” that Officer B had shown Mr X the footage, as the criminal disclosure process would normally provide for the CCTV footage to be made available to Mr X.

Who did Officer B discuss Mr X’s prosecution with?

33. Officer B approached Officer D, asking to speak with him about the prosecution. Officer D told us that Officer B made it clear to him that he had an interest in the file due to having a business connection with Mr X’s father (Mr Y). Officer D said Officer B told him he wasn’t trying to influence the prosecution, but he wanted to find out if the assault occurred, and if so, if Mr X was eligible for diversion or for a warning. Officer D said that he knew that Mr X did not have any criminal convictions and therefore would be eligible for diversion.²
34. Officer D said he could recall only one other occasion when Officer B spoke to him about an investigation file and that was also where Officer B knew both the parties involved.
35. Sometime during the following week, Officer B approached Officer A (Police prosecutor) to discuss the file. Officer B again made it clear that he knew Mr X’s father. Officer B suggested that Mr X was a first-time offender and therefore, he may be eligible for diversion.
36. Officer A told us that he said to Officer B: *“Look, given there might be a personal relationship or a perceived relationship, let me deal with it. I’ll have a look at it and let you know how I get on”*. From this time, Officer A took over the review but Officer B remained involved.
37. On 1 July 2020, a second Police prosecutor emailed Officer D and asked if any progress had been made to confirm Mr X was the offender. Officer D replied that the CCTV footage showed a clear assault for which Mr X was the offender. He asked why so much weight was being put onto Mr X’s claim that he did not commit the assault. No explanation was received.

What decisions did Officer A make after discussing the case with Officer B?

38. On 6 July 2020, Officers A, B and C viewed the CCTV footage together. Officer C pointed out the relevant parties to the others.
39. Officer A told us that what he saw in the footage was Mr X trying to walk away from the altercation several times until he was backed up against a wall by Mr W. Mr X threw a punch directly at Mr W, which hit Ms V. He said his first thought was that diversion was not going to be considered, because there was no evidential sufficiency for the charge against Mr X. Officer A said *“...in my opinion it was self defence (for) the defendant’s actions...he was at a stage where he was backed against a wall and in the circumstances, I would’ve done the same”*.
40. When asked about his analysis of self-defence under Section 48 Crimes Act 1961, he stated he considered the following factors:

² Diversion is a scheme that allows people to avoid a criminal conviction on minor and first time offences after being charged and is dealt with out of court.

- Did the defendant use force for defending himself or another?
 - What were the circumstances as the defendant believed them to be?
 - Was the force used reasonable in the circumstances?
41. Officer A explained that his analysis of the CCTV footage led him to believe that Mr W was being aggressive to Mr X for an unknown reason. He said Mr X had tried to walk away several times, had been confronted. On the last occasion he was backed up against a wall and Mr W lunged at him. He said Mr X threw one punch which stopped Mr W. There were no further strikes, blows, or kicks.
 42. After watching the footage, Officer A telephoned Ms V and left a message for her to contact him. He also telephoned Mr W.
 43. Officer A stated he did not talk to Mr X about self-defence. When speaking with us, he accepted that, in fact, Mr X's defence was that he had not assaulted Ms V.
 44. The following day, Officer A emailed Officers C and D saying he had watched the CCTV footage. He gave his interpretation, saying it showed Mr W was spoiling for a fight, with Ms V in between the two males; that Mr X tried to walk away several times; and that on the last occasion Mr X was backed against a wall. He said Mr W lunged at Mr X with Ms V between them. Mr X threw one punch which rocked Mr W's head and grazed Ms V's head.
 45. Officer A went on to say that there was a clear self-defence argument shown by the CCTV footage and Police did not have a reasonable prospect of conviction. He advised the charge against Mr X would be withdrawn in court the following day.
 46. Officer D replied, questioning the decision and asking if it was to be withdrawn without first speaking with Ms V. Officer A replied in turn, that if Officer D had objections to the charge being withdrawn, he was prepared to hold off for a fortnight. In court the following day, the defendant was remanded for two weeks without entering a plea.
 47. When asked about his decision to withdraw the charge, Officer A admitted that the defendant had not entered a plea but stated that, based on his analysis of the CCTV footage combined with Ms V's statement, he did not believe there was a reasonable prospect of conviction.
 48. On 13 July 2020, Officer A watched the CCTV footage again, this time with Officers C and D. Officer A told us he did not make notes at the time of watching the footage but made notes on the prosecution file when he returned to his office. In these notes he states: *"Discuss Section 48 with (Officers C and D). They disagree he was against the wall, pointing out the corner of the building, accept he was backing off when boyfriend lunged at him, agree section 48 and charge should be withdrawn"*.
 49. Once Officer A made the decision to withdraw the charge, he messaged Officer B, advising him that the charge against Mr X was going to be withdrawn. When asked about the need to notify Officer B, Officer A said Officer B is a very proactive manager. He said it was his practice to advise Officer B of prosecution outcomes, when it was a matter that Officer B had brought to

his attention. When we asked Officer B about this, he said that there was probably a couple of cases in the previous six months he had personally been involved in.

50. The charge was withdrawn at the next court appearance, on 29 July 2020.

Our analysis of the CCTV footage

51. In the CCTV footage:

- Mr X can be seen with a group of associates standing on the corner of Vine and Bank Streets. There is a bar with people gathered outside which is adjacent to the corner.
- Ms V and Mr W are also standing near the corner. Although there is no audio attached to the footage, from the body language it appears that Mr W and Mr X are engaged in a verbal altercation. Ms V appears to be attempting to diffuse the situation, repeatedly putting herself between the two males and trying to distract her partner.
- There is a considerable number of people on the street, but no one appears to be overly concerned with the altercation.
- After approximately 60 seconds, Mr W moves closer to Mr X. Ms V steps between them, facing her partner. Mr X then throws one punch.

52. Mr W did not lunge at Mr X but does move towards him. At no stage is Mr X backed against a wall.

53. During our interview with Officer A we viewed the CCTV footage on a laptop with him. When we challenged his analysis of the footage, he said that he had watched it on a 50 inch screen within the Police station, which had shown it more clearly. We have since watched it on a large screen, and our analysis remains unchanged.

54. We find Officer A's decision to withdraw the charge against Mr X was influenced by the involvement of Officer B, a more senior officer. Officer A's analysis of the CCTV footage was patently incorrect and also contrary to the analysis of Officer C (the sergeant who oversaw the prosecution) and another supervisor, Officer D. Mr X had never suggested he was acting in self-defence but, throughout, claimed he had been misidentified and had not thrown a punch at all.

Were Officer B's actions impacted by his relationship with Mr Y?

55. Mr Y told us that Officer B is a business acquaintance of his. At the time of our interview, Mr Y had known Officer B for approximately two years. They denied knowing each other socially.

56. The following text messages were exchanged between Officer B and Mr Y during the course of Mr X's prosecution. We believe they corroborate our view, that Officer B took an active interest in the case due to his relationship with Mr Y. We have anonymised the messages for this report but they both refer to each other by first name within the messages.

Date	Sender	Content
19.06.2020	Mr Y	"Hi there [Officer B] [Mr Y] here. Sorry to keep bothering you. Did you get a chance to look at my email about [Mr X]"
19.06.2020	Officer B	"Will look at the footage today"
19.06.2020	Mr Y	"Thanks [Officer B], really appreciate it"
19.06.2020	Mr Y	"Hiya [Officer B] Did you get a chance to check the footage today"
19.06.2020	Officer B	"Sorry cant talk right now" (Automated response)
06.07.2020	Mr Y	"Hi [Officer B] [Mr Y] here How is progress with [Mr X's] situation?"
06.07.2020	Officer B	"I will ring this afternoon"
06.07.2020	Mr Y	"Thanks [Officer B]"
Date unknown	Mr Y	"Hi [Officer B], no word from [Officer A] today so [Mr X] will have to go to court"
Date unknown	Mr Y	"Hi [Officer B] [Mr X] has just been told that [Officer A] isn't in court today. Will that be an issue?"
Date unknown	Officer B	"No"
Date unknown	Mr Y	"Cheers"
Date unknown	Mr Y	"Hi [Officer B] any joy on bringing [Mr X's] case forward?"
Date unknown	Officer B	"Not today"
Date unknown	Mr Y	"Okay thanks. Is it a mission?"
Date unknown	Officer B	"It is but I've been watching Mission Impossible, if they can do it, so can you and me"
21 July 2020	Mr Y	"Hi sorry to bother you again. Any word on [Mr X's] court case. He told me last night he is meant to be flying to Wellington on Thursday, which has been booked for months but he won't be able to because he is a breach (sic) of bail"
21 July 2020	Mr Y	"Hi [Officer B] can you call me?"
22 July 2020	Mr Y	"Hes been working in Kawakawa, on his way back and will go straight up to court"

Did Officer B seek to influence the prosecution process?

57. The Police Prosecution Service (PPS) is an autonomous national prosecution service within New Zealand Police. The PPS statement of policy and practice states that they have responsibility for managing all post charge prosecution processes, including;

- objectively assessing the quality of investigations and reviewing charging decisions;

- identifying and resolving case deficiencies;
 - providing guidance and support to the officer in charge of the case through the investigation and prosecution process;
 - conducting case management discussions with defence counsel;
 - withdrawing and modifying charges where appropriate;
 - receiving and modifying statements, liaising with witnesses, advising on court process and procedure; and
 - prosecuting cases in court.
58. The policy states that the objective of PPS is to ensure justice is done by making principled prosecution decisions and prosecuting cases firmly, fairly and effectively.
59. In regard to prosecutorial independence, the policy states: *“the universally central tenet of a prosecution system under the rule of law in a democratic society is the independence of prosecutor from persons or agencies that are not properly part of the prosecution decision making process”*.
60. We believe Officer B used his position as a senior member of Police in the District to influence the outcome of the prosecution in order to help Mr Y and his son, Mr X, who he viewed as a *“good kid”*.
61. Officer B engaged with Mr Y and various officers to ensure the prosecution of Mr X did not progress. He was clearly predisposed to believe that Mr X had not committed an offence. He:
- advised Mr Y that Mr X should not make a statement to Police;
 - allowed Mr Y and Mr X into the Police station to view the CCTV footage against normal practice;
 - advised Officer C that Mr X was a *“good kid”* with no previous convictions;
 - deliberately but erroneously impugned Ms V’s credibility by stating she had previous convictions and had lied in her Police statement, without any evidence of her doing so;
 - directed Officer C to call Ms V and tell her there was little evidence of an assault;
 - after being shown the footage again and having Mr X’s actions pointed out to him, then approached Officer A (Police prosecutor) to discuss the case and view the footage with him; and
 - continued to engage with Mr Y throughout.
62. Officer B does not have a role in PPS or in deciding diversion or prosecution of cases. As a senior officer in the District, his contact with Officers A, C and D (all more junior in rank) to discuss the case in detail, question their decision-making and influence the outcome, was inappropriate and

improper. His actions, in allowing Mr Y and Mr X to view the CCTV footage in a secure area of the Police station, was against normal practice. To do so without the arresting officer or their supervisor was inappropriate and indicative of his wish to help Mr Y and Mr X, who he knew in a private capacity. When Officer B was contacted by Mr Y, he should have simply alerted Officers A and C to the issues raised so they could manage the matter.

63. Officer A's assessment of the CCTV footage was flawed as it did not reflect what is seen in the footage. His decision to withdraw the charge was based wholly on the CCTV footage, in conjunction with the statement from Ms V. We find he was influenced by Officer B's contact and wish for Mr X not to be convicted. While the decisions and actions he took were within his authority and normal role, they were taken due to the improper influence of Officer B.

FINDINGS ON ISSUE 1

Officer B improperly influenced the prosecution outcome for Mr X.

Officer A's assessment of the CCTV footage was flawed. His decision-making was improperly influenced by Officer B.


ISSUE 2: DID OFFICER B BREACH THE CONFLICT OF INTEREST POLICY BY BEING INVOLVED IN MR X'S PROSECUTION?

64. The Police policy on "Managing conflicts of interest" refers to the definition from the Public Service Commission model standards. A conflict of interest means: "*a conflict between a public duty and private and/or personal interests. Conflicts of interest can be actual, perceived or potential.*"
65. The policy further defines the following:
- Actual conflict: "*a conflict between official duties and other interests that could interfere with a Police employee's ability to be impartial, objective and independent*".
 - Perceived conflict: "*the perception of outside observers that a Police employee's other interests may interfere with their ability to be impartial, objective and independent, whether or not that is the case*".
 - Potential conflict: "*a situation where other interests have the potential to interfere with a Police employee's official duties in the future, or where their official duties could affect their other interests in the future*".
66. The policy states that conflicts of interest should be avoided if possible and another employee assigned to the investigation.
67. Officer B and Mr Y had a business relationship and knew each other personally. Mr Y knew Officer B was a Police officer. Therefore, Officer B, had an actual conflict of interest with Mr Y, given this business relationship.

68. When spoken to about the conflict of interest, Officer B said he understood the thrust of the policy. When he first became involved, he did not see a conflict and was open to other Police staff about his relationship with Mr Y. He said all he was doing was looking at the CCTV.
69. When asked if he believed the conflict was negated by declaring it, he said he knew it wasn't. He admitted that one of the options he had was to pass Mr Y's enquiry onto someone else to deal with.
70. The Authority is satisfied that Mr Y contacted Officer B directly because of their pre-existing relationship, and that Officer B's initial and ongoing engagement with Mr Y, in respect of Mr X, was a conflict of interest. It could have been avoided by Officer B advising his supervisor of the conflict and stepping aside from any further involvement.

FINDING ON ISSUE 2

Officer B breached the conflict of interest policy. He should have referred Mr Y to another officer to address his concerns.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

14 July 2022

IPCA: 20-5151

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

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

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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