

MINISTERIAL INQUIRY

INTO MATTERS RELATING TO THE DEATH OF

DEBBIE MARIE ASHTON

EDITED VERSION FOR PUBLIC RELEASE

9 JULY 2008

Kristy P McDonald QC

Edited Version for Public Release

The attached report is an edited version of the original Ministerial report of Kristy McDonald QC, dated 14 December 2007. This edited report reflects the corrections made by Ms McDonald to her report in her addendum of 29 January 2008.

In addition, the information relating to methodology and process involving the Police Witness Protection Programme, the identities of those operationally involved with the Police Witness Protection Programme, details of the interaction between the Police Witness Protection Programme and the Department of Corrections, and identities of individuals within the Department of Corrections that interacted with the Police Witness Protection Programme has been withheld from the original report. The various names of the offender are not included in the report as they are either the subject of permanent suppression orders or withheld for the purposes of this report.

Suppression Orders

On 7 November 2006, Offender ZZ appeared in Court providing a name given to him under the Witness Protection Programme (referred to as “Offender XX” in this report). In a decision dated 31 May 2007 Justice Simon France permanently suppressed that name and also suppressed the drawing of a link between that name and Offender ZZ.

In a decision dated 8 July 2008, Justice Simon France clarified that there is no order suppressing publication of Offender ZZ’s involvement in the Witness Protection Programme.

Previously, on 11 October 2006 Judge Zohrab made a permanent order suppressing Offender ZZ’s name in respect of his conviction for failing to stop and reckless driving on 26 July 2006.

Although this suppression order is limited to that offending, for consistency and to avoid any potential breach of Judge Zohrab’s suppression order, the offender is not named in this report.

1. INTRODUCTION

- 1.1 The issues raised by this Inquiry and the Findings I have made show very clearly that the Ashton family were justified in bringing this matter to notice.
- 1.2 I have found failures in the systems, practices and processes of the New Zealand Police and the Department of Corrections and I have identified issues in relation to the performance of individuals which, in my view, have contributed to the situation which lead to Offender ZZ being at large driving a motor vehicle on 5 December 2006 when Ms Ashton died.
- 1.3 I trust that the findings and recommendations I have made, if accepted, result in improvements to the systems, processes and practices of the Police and the Department of Corrections which will eliminate, so far as possible the occurrence of such an event as this in the future.

2. EXECUTIVE SUMMARY

Factual Summary

- 2.1 On 6 December 2006 Ms Debbie Marie Ashton ('Ms Ashton') died as a result of a collision with another vehicle in Nelson the previous day, 5 December 2006.
- 2.2 In May 2007 Offender ZZ, the driver of the other vehicle involved in the collision was convicted of manslaughter, arising from his reckless driving causing the collision and Ms Ashton's death.
- 2.3 At the time of the collision, Offender ZZ was on Parole in relation to burglary and dishonesty offences for which he had been sentenced in December 2005. He had been relocated to Nelson in July 2006 under the New Zealand Police Witness Protection Programme ('the Witness Protection Programme'), and given a new identity, Offender XX.
- 2.4 On 11 October 2006 Offender ZZ had been disqualified from driving for eighteen months and was given a final warning in respect of driving offences, including reckless driving. At that time (whilst using his new identity, Offender XX) he disclosed to the Police and to the District Court at Nelson his previous name - Offender ZZ - and his involvement with the Witness Protection Programme. Accordingly, his previous criminal record was taken into account by the Court for the purpose of sentencing. In the event, he was charged, convicted and sentenced in the name of Offender ZZ (for confirmation that he was charged as ZZ on 28 July 2006, see para 4.26 of the Report).
- 2.5 On 19 October 2006 Offender ZZ was stopped by Police again and charged with driving with excess breath alcohol. He was charged under his new identity, Offender XX. He was convicted of the charge when he appeared before the District Court at Nelson in November 2006. On this

occasion, Offender ZZ (who appeared in court as Offender XX) failed to disclose his previous identity to the Police and to the Court and as a consequence he was dealt with as a first offender. On conviction he was fined \$500 and disqualified from driving from 8 November 2006 for a period of six months.

- 2.6 The collision which killed Ms Ashton occurred in Nelson at approximately 10.40pm on 5 December 2006. Ms Ashton died approximately three hours after the accident.
- 2.7 When Offender ZZ was initially spoken to by Police he did not disclose his birth name, (Offender ZZ) but relied on his new identity. He was initially charged under the identity Offender XX. It was only by chance that Police in Nelson happened to find out shortly after charges were laid, that his birth name was Offender ZZ and he was on the Witness Protection Programme.
- 2.8 On 16 February 2007 Offender ZZ's Parole was revoked and he was recalled to prison. A Final Recall Order was made by the New Zealand Parole Board ('the Parole Board') on that date. Prior to that, Offender ZZ had been remanded in custody and then held in Prison on an Interim Recall Order which was issued by the Parole Board on 20 December 2006.
- 2.9 In May 2007 Offender ZZ was convicted of manslaughter arising from the collision on 5 December 2006.

Summary of Findings

- 2.10 The tragic circumstances in which Ms Ashton died arose from the series of individual errors and systems failures leading to a situation which allowed Offender ZZ to be at large driving a motor vehicle when he should not have been. At the time of the accident he had a blood alcohol level of 57 milligrams of alcohol per 100 millilitres of blood.

The legal limit for an adult driving a motor vehicle on a road was and is 80 milligrams per 100 millilitres. He was a disqualified driver and he had only a few weeks previously been given a final warning by the Court in respect of driving offences including reckless driving. The circumstances which allowed him to appear before the Court in November 2006 on the charge of excess breath alcohol using his new identity meant the Court dealt with him as a fresh offender without knowledge of his birth name, the fact that he was on parole or any knowledge of his previous criminal and traffic offending histories.

- 2.11 At the time he appeared before the Court in November 2006, his Probation Officer, the Department of Corrections Head Office Operations Adviser at Corrections' Head Office, the National Witness Protection Coordinator at Police National Headquarters, and Offender ZZ's legal counsel were all on notice that Offender ZZ was intending to appear in the Nelson District Court under his new name. There were no steps taken to ensure this did not happen or to ensure that the Court knew his birth name, that he was on Parole, or that he had previous convictions. Accordingly he was dealt with as a first offender, fined and disqualified from driving.
- 2.12 The Department of Corrections in the form of Community Probation and Psychological Services ('CPPS') did not apply to have Offender ZZ's parole recalled in November 2006. For the reasons I have referred to in more detail below I have reached the view that Offender ZZ should have been recalled to prison in at least November 2006. If that had been done he would not have been driving a motor vehicle in December 2006 when Ms Ashton was killed.
- 2.13 Not only have I concluded that there were a series of mistakes made by individuals, more significantly I have found that the systems, policies and practices in place at the time by the Departments of Corrections and Police were inadequate and contributed to these events. There were failures in communication between Government Departments and

within Departments and there was a lack of clarity of reporting lines. Further there was a failure within the Department of Corrections to provide proper direction and oversight to those managing a parolee in circumstances such as those that arose in this matter.

- 2.14 The individuals spoken to who have made mistakes in this case regret them bitterly and have been open and frank in their acknowledgement of their errors. Human error is inevitable. That is why organizations such as the Departments of Corrections and Police need to ensure that they have proper systems and processes in place for management and supervision of staff sufficient to minimize the risk of error. Mistakes will always occur but in this case the errors that occurred should have been picked up and corrected through more effective supervision and processes designed to minimize the risk.
- 2.15 The emphasis in this report is on steps which I believe need to be taken to improve the systems, practices and processes used by those agencies responsible for managing / monitoring a protected witness. I acknowledge that many improvements have been introduced at both the Departments of Corrections and Police but my recommendations make it clear that further matters need to be addressed.
- 2.16 By far the majority of those individuals admitted to the Witness Protection Programme have criminal backgrounds; often very serious criminal backgrounds. The Witness Protection Programme offers them a new identity and with that an opportunity to function in society as if they had no criminal background. I have not, as part of this inquiry given any consideration to the merits of Police running a Witness Protection Programme. I have been told that it is a necessary part of policing in New Zealand at this time and I have accepted that. This is not an inquiry into the general value of that Programme. What is clear though is that if Police and to a lesser extent related Government agencies wish to maintain such a programme with all the risks inherent in providing individuals with a criminal background the opportunity to

function as if they did not have such a background, then it must be accepted that a high level of monitoring and supervision of those individuals is required. It is essential that witnesses on the Witness Protection Programme cannot hide behind the Programme. If they fail to comply with the conditions of the Programme and in particular commit criminal offences then the public must be assured that the systems in place ensure that they will be dealt with by the Courts and by Police, Corrections and related agencies on the basis of their birth identities.

- 2.17 I have been asked whether a situation such as happened with Offender ZZ has happened on other occasions. It is not possible to say with complete certainty that certain problems similar to those that occurred in this case have not arisen in the past. That said, I have sought assurance from Police that they have checked past and current witnesses on the Programme in relation to merged identities and matching of identities with criminal and other offending histories. I have been told that the process currently followed in relation to former witnesses is that their birth and new identities are merged only where the witness has been charged and convicted of a criminal offence and the new identity then becomes recognised as an alias under the master identity. I have also had it confirmed by Police that a check of all witnesses since 2003 has been made and that no witnesses have had convictions entered against their new identities.

3. COURSE OF INQUIRY

Terms of Reference

- 3.1 In September 2007 I was appointed by the Minister of State Services and the Minister of Police, Hon. Annette King, ('the Minister'), to inquire into and report on matters relating to the death of Ms Ashton in December 2006 following the collision with the vehicle driven by Offender ZZ.
- 3.2 The decision to conduct a Ministerial Inquiry followed acceptance of a request of the Minister by the Hon. Dr Nick Smith (Member of Parliament for Nelson) on behalf of the family of the late Ms Ashton, for an independent inquiry to be carried out into the fatal collision on 5 December 2006, and the government agencies involved in the management of Offender ZZ.
- 3.3 The Minister afforded the opportunity to the Hon. Dr Smith MP and the Ashton family to comment on the draft Terms of Reference for the Inquiry. The Minister wrote to me by letter dated 18 September 2007 enclosing a copy of a letter she had received from the Hon. Dr Smith MP in which he raised a number of matters related to the draft Terms of Reference. The Minister confirmed that she had made two amendments to the draft Terms of Reference as a consequence of Dr Smith's comments. The Minister advised that she believed the remainder of Dr Smith's points could be addressed within the existing Terms of Reference. I was asked specifically to consider the other points Dr Smith had raised in his letter when conducting my Inquiry. I have done so.

3.4 In particular, I have been asked to inquire into and report on:

3.4.1 The relevant facts whereby the driver was in a position to drive a motor vehicle on 5 December 2006 despite his previous offending, in particular but not limited to the following:

- The circumstances in which the driver was able to make use of his new identity under the Witness Protection Programme enabling him to be treated as a first offender in November 2006 and the appropriateness thereof;
- Whether and to what extent there were failures in the systems, practices or procedures of those agencies who dealt with this matter including (but not limited to) Police, Corrections, Justice (Courts), or legal processes (including legal representation) that caused or contributed to the driver being in a position to drive a vehicle on 5 December 2006 and thereby cause Ms Ashton's death;
- The nature, timing and appropriateness of enforcement action taken against the driver while he was on parole.

3.4.2 Identify and make recommendations in relation to any action taken or required by the agencies or parties involved in these events to adopt, amend or otherwise address processes, procedures and systems to prevent such a tragedy recurring.

3.5 In carrying out my Inquiry I did not have the power to compel the production of evidence. However, where I considered it appropriate, I requested that certain information be provided.

3.6 I have not contacted Offender ZZ. I did not believe my Terms of Reference necessitated that I do so.

- 3.7 As I set out in my Report, I have found there were failures in the systems, practices or procedures of the agencies who dealt with this matter. In addition I have raised questions about the conduct of the individuals who were given the responsibility of monitoring Offender ZZ and I have expressed criticism concerning the conduct of the lawyer who represented Offender ZZ before the District Court at Nelson in October 2006 and again in November 2006 when Offender ZZ appeared and was sentenced under the name Offender XX. However, as I have indicated throughout my Report, it is not my task to make findings of misconduct by specific individuals, including individuals within any of the agencies involved, and I have not done so.
- 3.8 By letter dated 13 September 2007 I wrote to Mr and Mrs Ashton and advised them of my wish to meet with them in a preliminary way. I indicated that further opportunity would be provided to them to make whatever submissions they wished. I duly met with Mrs Ashton on 25 September 2007. Mrs Ashton presented me with detailed written submissions which I have read and taken into account when conducting my Inquiry. I met with Mrs Ashton for a second time in Nelson on 12 November 2007. I have continued to have contact with Mrs Ashton from time to time advising as to progress with the Inquiry.
- 3.9 In September 2007 I conducted preliminary meetings with Assistant Commissioner Gavin Jones and Detective Superintendent van der Velde, National Crime Manager, from the Police. In addition I had a lengthy meeting with Detective Senior Sergeant A, National Coordinator of the Witness Protection Programme to discuss matters concerning the Witness Protection Programme. Detective Senior Sergeant A was invited to supply any written material that he considered may be relevant to my Inquiry.
- 3.10 The Police made available their files in respect of Offender ZZ. I considered all of the material on those files. In addition I received and considered written submissions made on behalf of the Police.

- 3.11 On 12 November 2007 I travelled to Nelson and met with Detective B. Detective B acted as the local Liaison Officer for the Witness Protection Programme. In addition I met with Detective Sergeant C of Nelson Police. Detective Sergeant C was the on-call CIB-Officer in Charge of the file arising from the fatal collision on 5 December 2006. I also met with Sergeant D who was the Police Prosecutor who appeared in the Nelson District Court on the two occasions at which Offender ZZ appeared in October 2006 (as Offender ZZ) and November 2006 (as Offender XX). I also had an opportunity of discussing relevant issues with the Nelson District Commander, Superintendent O'Fee.
- 3.12 By letter dated 20 September 2007 I wrote to Detective Senior Sergeant E, Officer in Charge of the Witness Protection Unit, and advised that I wished to meet with him and with other members of his staff to discuss matters relating to Offender ZZ and events surrounding his involvement in the Witness Protection Programme. I indicated I would be happy to receive any submissions which he or members of his team wished to make in relation to my Terms of Reference. I met with Detective Senior Sergeant E and members of the Witness Protection Squad on 13 November 2007. The Witness Protection Unit operates from a location in New Zealand that does not need to be identified for the purposes of this Report. What does need to be noted, however, is that the location is not Wellington.
- 3.13 By letter dated 20 September 2007 I wrote to Ms Katrina Casey, General Manager of the Department of Corrections (Head Office, Wellington) and afforded her the opportunity to meet with me. As a consequence of information provided by Ms Katrina Casey I wrote to Ms G, who was at the time of the relevant events the Community Probation Service Head Office Operations Adviser who managed the Offender ZZ case for CPPS. It was in that context that I afforded Ms G the opportunity to meet with me to discuss issues arising from my Terms of Reference. In addition I invited Ms G to make any comments or submissions she wished. I met with Ms G on 7 November 2007. Ms

G no longer works for the Department of Corrections. I met with Ms H on 7 November 2007. Ms H was the Senior Probation Officer (Nelson) responsible for managing Offender ZZ's Parole. I met with Ms Katrina Casey, Mr I and Ms J on 8 November 2007.

- 3.14 I wrote to the Registrar of the District Court at Nelson, Mr K, and indicated that I wished to speak to him concerning my Inquiry and, if possible, have access the Court file relating to Offender ZZ's appearances in October 2006 and November 2006. I was provided with a copy of the Sentencing Notes of Judge Zohrab dated October 2006 and November 2006 respectively, and a copy of the transcripts of the hearings on those dates. I met with the Court Registrar and the Court Manager in Nelson on 12 November 2007.
- 3.15 I wrote to Mr L, General Manager based at the District Court at Wellington. I believed it was relevant to discuss with him or a representative of Courts the issues concerning the systems, practices or procedures of the Department for Courts in relation to the way in which issues concerning Offender ZZ relating to relevant events were dealt with; in particular, issues concerning Offender ZZ's involvement in the Witness Protection Programme and his appearances before the District Court at Nelson. I invited him to meet with me and to make submissions. I did not receive any response from Mr L but consider I have been able to address the necessary issues with staff from the Department of Corrections and the Nelson Court.
- 3.16 By letter dated 25 September 2007 I wrote to His Honour Judge David Carruthers, Chairman of the New Zealand Parole Board. I invited Judge Carruthers to meet with me to discuss issues concerning Offender ZZ and his contact with the Parole Board. I also indicated I would be happy to receive any written submissions from the Parole Board in relation to the matters the subject of my Terms of Reference. On 24 October 2007 I met with His Honour Judge Carruthers and with Mr Alistair Spierling,

the Manager of the Parole Board. I also received and considered a copy of the Parole Board file in respect of Offender ZZ.

- 3.17 On 25 September 2007 I wrote to Mr Mark Dollimore, Barrister and Solicitor of Nelson and invited him to meet with me and/or to make any submissions he wished to make into relevant matters. As stated, Mr Dollimore represented Offender ZZ/ Offender XX before the District Court at Nelson on the two occasions he appeared in October and November 2006 respectively. On 27 September 2007 I received a letter from Mr Dollimore (by facsimile) advising that he had spoken to his client (in the absence of having received clarification from Mr Dollimore as to the identity of his client, I have presumed it is Offender ZZ) and his firm instruction was to the effect that he was to have no communication / input as regards my Inquiry. Because of potential professional issues for Mr Dollimore arising from his involvement with Offender ZZ, I wrote to Mr Dollimore again on 23 October 2007 and invited him to reconsider his position in relation to cooperating with my Inquiry. I subsequently received a letter date (*sic*) 12 November 2007 from Mr Dollimore's barrister, who advised that he had been instructed to represent Mr Dollimore and that Mr Dollimore had no authority from his client to provide me with information and would not be in a position to assist me. Mr Dollimore's barrister suggested that Mr Dollimore was prevented from discussing matters with me because of the legal privilege owed to his client.
- 3.18 In October 2007 I received from Hon Dr Nick Smith MP a copy of his correspondence with Mr Ian Smith, Wellington Regional Coroner in relation to the Inquest to be held into the death of Ms Ashton. Mr Smith has deferred the Coroner's Inquest until my Inquiry has been completed. I met with Mr Smith on 14 November 2007.
- 3.19 I have had further meetings with Assistant Commissioner Gavin Jones and Detective Superintendent van der Velde and I have received further information from Police and the Department of Corrections in response

to requests I have made for specific information. I have also had the opportunity of meeting with Acting Inspector M, the Police National Manager Business Analysts, who has been able to assist me greatly with understanding many of the technical communications and IT systems issues that arise in this matter.

- 3.20 My analysis of the information provided to me and my findings are set out below. After outlining the relevant guidelines and protocols in respect of the Witness Protection Programme, giving an overview of the respective roles and responsibilities of Police and Corrections, and summarising the relevant IT issues which have arisen I deal with each of the Terms of Reference consecutively.
- 3.21 I note that I have been assisted in the process of marshalling the sequence of events which lead to the death of Ms Ashton and the subsequent recall of Offender ZZ to prison, by detailed written chronologies of events prepared by officials within Corrections and the Police. I have checked these chronologies against the source documents on the files provided to me by those agencies and I am satisfied that the information set out below is an accurate account of events.
- 3.22 It is also necessary to record that the agencies principally involved in this matter; Police, Corrections and Justice have cooperated fully with the Inquiry and have given me full access to all relevant information.
- 3.23 For the most part I have referred to Offender ZZ throughout this Report by use of his birth name rather than by reference to his new identity, Offender XX. There are though a number of references to the name Offender XX which has been unavoidable. I note that there are Suppression Orders in place, which I discuss in more detail later in this report, that prohibit the publication of certain details relating to the offender. Therefore in this report, when referring to his birth name, I have called the offender 'Offender ZZ'. When referring to his new name I have called him 'Offender XX'. Also, I have not identified the

location of the Prison where Offender ZZ was held or the location of the Witness Protection Unit as there is no reason those locations need to be identified.

4. FACTUAL BACKGROUND

Offender ZZ

- 4.1 Offender ZZ has an extensive criminal history including convictions for numerous dishonesty, drug and driving offences spanning back to 1 September 1997.

Assessment and Admission to the Witness Protection Programme

- 4.2 The Witness Protection Programme is run from an office outside Wellington. The National Coordinator, Detective Senior Sergeant A, is based in Wellington at the Office of the Commissioner of Police. He does not have responsibility for the operational running of the Witness Protection Programme although he does appear to have some operational duties. The responsibility for the operational running of the Programme lies with Detective Senior Sergeant E, the Officer in Charge of the Witness Protection Unit.
- 4.3 On 5 October 2005 Detective Sergeant N requested that Offender ZZ be assessed for admission into the Witness Protection Programme. On 7 October 2005 Offender ZZ underwent an assessment conducted by Constable O and Sergeant P in Prison. At that time, Offender ZZ was residing in Prison and was due to face trial in the District Court on a variety of fraud and drugs charges. Approval for Offender ZZ's admission into the Programme was given on or about 10 October 2005 and an agreement was signed by Offender ZZ and Police. Offender ZZ was then transferred to Prison.
- 4.4 In October 2005 Offender ZZ was taken to Auckland where he gave evidence in the trial of those charged as a result of a police operation.

- 4.5 In October 2005 Offender ZZ appeared in the District Court at Auckland on 24 fraud, drugs and driving related charges (including burglary (over \$5000) by night (x 3), intentional damage (intent to obtain benefit / cause loss), escaping from lawful custody, theft from car (x 2), shoplifting (under \$500) (x 2), theft property (under \$500), theft property (over \$1000) (x 5), receiving property (under \$500) (x 3) and causing loss by deception (under \$500); careless driving, disqualified driving and failing to stop). He pleaded guilty to the charges. In the period from the date of his plea until his sentencing in December 2005 Offender ZZ was held as a remand prisoner.
- 4.6 Offender ZZ underwent a screening assessment / was interviewed for a pre-sentence report in November 2005 by a Probation Officer from the region where he was held on remand. In the pre-sentence report, it is noted that the offending for which Offender ZZ was awaiting sentence was driven by his addiction to methamphetamine, that overall it was serious and that a prison sentence was warranted and anticipated by Offender ZZ.
- 4.7 In December 2005 Offender ZZ was sentenced in the District Court at Auckland (Judge Simon Lockhart QC) in respect of his October 2005 convictions. Offender ZZ was sentenced to a period of two years, six months imprisonment commencing on that date. He became eligible for parole on that date by virtue of the time he had already spent in custody.
- 4.8 Offender ZZ returned to prison to serve his sentence. He continued to be held in the prison where he had been living since he had first been transferred in October 2005 under another identity 'Q'.
- 4.9 Because of Offender ZZ's status as a protected witness I understand he did not receive the usual 'interventions' that are provided to an inmate; for example, drug and alcohol counselling.

4.10 Offender ZZ (under the name of Q) made an application for Parole and a hearing to consider the application was scheduled to take place in March 2006. In February 2006 a Prison Offender's Report to the New Zealand Parole Board was prepared by the Principal Corrections Officer at the Prison. The Report was prepared under Offender ZZ's prison name of Q.

Application for parole

4.11 The hearing to consider Offender ZZ's application for Parole in March 2006 was adjourned to April 2006 to enable the Parole Board to receive the sentencing notes of Judge Lockhart QC of December 2005 and information pertaining to Offender ZZ's criminal and traffic conviction history. During the course of my discussions with His Honour Judge Carruthers, Chairman of the New Zealand Parole Board, I was advised that the Board was aware at all material times that Mr Q was an alias and that he was on the Witness Protection Programme.

4.12 Offender ZZ appeared before the Parole Board in April 2006. On the basis that the Board now had all the information it wanted, the Board decided to release Offender ZZ, that is "Q";, on parole in May 2006 on the usual standard conditions and on four special conditions until his Statutory Release Date (August 2007). Those special conditions were as follows:

- (i) To reside at an address approved by the Probation Officer;
- (ii) To attend and complete alcohol and drug counselling as directed by the Probation Officer;
- (iii) To attend any other counselling, programmes and/or treatment to reduce his risk of reoffending and directed at his rehabilitation and re-integration into the community as directed by the Probation Officer; and
- (iv) To undertake employment and/or employment related training as directed by the Probation Officer.

Offender ZZ's Release from Prison

- 4.13 Constable R was assigned the role of Offender ZZ's Witness Protection Programme Case Officer or Handler. He was based with the Witness Protection Unit. Constable R advised Detective Senior Sergeant A by email that Offender ZZ was to be paroled in May 2006.
- 4.14 Offender ZZ was released from the Prison unit in May 2006 to Parole for the period from that date to August 2007. The Notification of Release on Licence ("the Parole Licence") issued to Offender ZZ by the Department of Corrections was issued in the name of Q. The Parole Licence was a document prepared by the Department of Corrections at the Prison. Offender ZZ was noted as proceeding to "No Fixed Abode" with a standard instruction to report to the Community Probation Office within 72 hours of release. The effect of the Parole Licence was that Offender ZZ remained liable to be recalled to prison through until August 2007.
- 4.15 The Parole Licence was entered into the Department of Corrections Community Probation and Psychological Services (CPPS) Offender Database (IOMS) by the Prison under the name of Q.

Community, Probation, Psychological Services Involvement (CPPS)

- 4.16 The CPPS had no involvement in Offender ZZ's pre-release from the prison. He was not subjected to CPPS Operations Manual policy and process prior to his release. For example, the prison did not inform CPPS of the requirement for a pre-release report which would have confirmed proposals for Offender ZZ's release, the recommended length of Parole and any special conditions attaching to his Parole. I understand the standard notification of release to CPPS is within eight weeks of the initial Parole Board hearing. It would appear that the practice at the prison in respect of prisoners on the Witness Protection

Programme was for prison unit staff to submit a Prison Offender's Report to the Parole Board as a substitute for a Pre-Release Report. It is noted that the Prison Offender's Report prepared for Offender ZZ (in the name of Q) did not canvass issues relating to release proposals, length of parole or potential special conditions, which a pre-release report would have been expected to cover (as set out in the CPPS Operations Manual).

- 4.17 CPPS has no record of Offender ZZ having reported to the Community Probation Office within 72 hours of his release on Licence. The requirement for parolees to report to a probation officer within 72 hours of release is a legislative requirement specified on all Parole Licences. There is no record of any enforcement action having been taken as a result of this non-compliance.
- 4.18 On 10 May 2006 CPPS, after receiving Offender ZZ's Parole Licence from the Prison, posted the Licence to then CPPS Head Office Operations Adviser, Ms S.

New Identity

- 4.19 It was not until his release from the prison that Police took steps to give Offender ZZ a new identity under the Witness Protection Programme. The CPPS Head Office Operations Adviser at the time, Ms S, agreed with the National Witness Protection Programme Coordinator (Detective Senior Sergeant A) that Offender ZZ's Parole conditions could be suspended while Offender ZZ was being relocated by Police and given a new identity under the Witness Protection Programme. CPPS have no record of this agreement but accept that such an agreement was reached and that in respect of Witness Protection Programme participants the practice of suspending parole pending the provision of a new identity was not unusual. This explains why

Offender ZZ did not report to a Probation Officer for the first three months and 22 days of his release from the Prison.

- 4.20 When creating a new identity for a protected witness Police do not create a Personal Record Number (PRN) for the participant. As a consequence, the management of the offender under his new identity cannot be recorded in the CPPS IOMS database. That had implications for the management of Offender ZZ's Parole. Certain CPPS Operations Manual and Quality Assurance System (QAS) requirements could not be met (for example, completion of offender details IOMS screen, IOMS 'alert' or case note to record Offender Warning System (OWS) status, RNC case note in IOMS, record of Parole order details, current IOMS instruction to report). Without the functionality of IOMS the ability for CPPS to create a sentence plan for the parolee to Operations Manual standards required individualised plans and protocols to be developed. The computer templates could not be used.
- 4.21 Offender ZZ was temporarily relocated by Police to a location that does not need to be identified for the purposes of this Report. In the period from May 2006 through to July 2006 when a decision was made to relocate Offender ZZ (now known as Offender XX) to Nelson, Police had physical contact and telephone contact with Offender ZZ. Those contacts were principally for the purposes of arranging Offender ZZ's new identity and addressing relocation issues.
- 4.22 Offender ZZ and his partner (who was also given a new identity by Police) were relocated to Nelson on 18 July 2006. On 20 July 2006 Offender ZZ was introduced to the Nelson based Witness Protection Programme Liaison Officer, Detective B by Senior Constable T and Detective Sergeant I (Witness Protection Unit) who had travelled to Nelson to establish Offender ZZ in his new location. Detective B was the only Nelson Police Officer who knew of Offender ZZ's true identity. Detective B told me that he had not previously been involved in a role which involved a Witness Protection Programme participant

and he was not familiar with Witness Protection Programme requirements or procedures. At the time he was assigned to the role of Local Liaison Officer Detective B was advised that his role was limited to being a Nelson contact for the Witness Protection Programme in the event Offender ZZ could not contact Witness Protection Programme officers or if those officers required a Nelson contact for such tasks as serving summons. Detective B was advised that if Offender ZZ came to the attention of Nelson Police then Offender ZZ had been told to contact him or a Witness Protection Programme officer. Detective B was not expected to contact Offender ZZ at any stage or to visit him. Detective B's meeting with Offender ZZ on 20 July 2006 was to be the only time he met him. He had no further contact with Offender ZZ or with the Witness Protection officers.

Witness Protection Monitoring

- 4.23 As indicated, Senior Constable R was designated as Offender ZZ's primary handler and had primary responsibility for the monitoring of Offender ZZ. Constable T was Offender ZZ's secondary handler. Constables R and T reported to a Senior Police Officer (an NCO) – Sergeant P.
- 4.24 It seems that no additional supervision or monitoring was put in place as a result of Offender ZZ's offending in July 2006. I discuss that issue in more detail below.
- 4.25 On 25 July 2006 Constable R notified Detective Senior Sergeant A in Wellington of Offender ZZ's new address to enable him to notify CPPS.

July 2006 Offending

- 4.26 On 26 July 2006 Offender ZZ, who was now using his new Witness Protection Programme identity, Offender XX, committed offences of reckless driving and failing to stop in Nelson. Offender ZZ was arrested and charged on 28 July 2006 under the name of Offender ZZ. He was also charged with unlawfully getting upon a motorcycle but that charge was later withdrawn. There was email contact between Constable T and Offender ZZ on 26 and 27 July 2006. CPPS records (Nelson Probation Officer case notes) show that CPPS was not aware of Offender ZZ's July offending until on or around 20 September 2006. In this regard I note that a signed "Induction Checklist" and an Instruction to Report held on the CPPS file which I have reviewed were both dated 18 September 2006. Those documents indicate that Offender ZZ may have disclosed his further offending two days earlier than was case noted on 20 September 2006.
- 4.27 On 31 July 2006 Detective Sergeant I received a telephone call from Offender ZZ who advised of his arrest for driving offences the previous Friday 28 July 2006. Offender ZZ was told to seek remand without plea for a period of three weeks.
- 4.28 On 3 August 2006 a Memorandum prepared by Detective Senior Sergeant A (Police National Witness Protection Programme Coordinator, Wellington) to the CPPS Head Office Operations Adviser, notified CPPS of Offender ZZ's new name (Offender XX) and new Nelson address. There is no reference to the name 'Q' in the Memorandum (being the name Offender ZZ's Parole Licence was issued in). CPPS were advised that Offender XX would be available to report to CPPS after 14 August 2006.

- 4.29 On 14 August 2006 the CPPS Head Office Operations Adviser, Ms G queried with Detective Senior Sergeant A as to what sentence Offender ZZ was subject to. The query arose because Ms G had been unable to locate a file under the name Offender XX or Offender ZZ. As I discuss below I have found the Parole Licence issued in the name of Q was not linked by CPPS to either the name Offender ZZ or Offender XX.
- 4.30 That day, 14 August 2006, Offender ZZ attended the High Court at Auckland to give evidence at a trial.

Nelson Probation

- 4.31 On 17 August 2006 the CPPS Head Office Operations Adviser, Ms G, contacted the Nelson CPPS Service Manager (Ms U) to establish the date and time for Offender ZZ's (as Offender XX) first reporting to a Probation Officer. Ms U replied confirming that 24 August 2006 at 1.00pm was the first reporting time. The Nelson Probation Officer, Ms H, sought advice from Ms G on the process for managing a person in the Witness Protection Programme. Ms H is a Senior Probation Officer.
- 4.32 The following day, 18 August 2006, Ms G advised Detective Senior Sergeant A of Offender ZZ's first reporting date of Friday 24 August 2006. That was an error as the first reporting date was in fact Friday 25 August 2006.
- 4.33 On 21 August 2006 the CPPS Head Office Operations Adviser, Ms G, emailed instructions to Ms U, (Nelson CPPS Service Manager) as to how Offender ZZ should be managed as a Witness Protection Programme offender. A paper file included the following documentation:

- Parole Licence
- Parole Board decision of April 2006
- Parole Board decision of March 2006
- Prison offender details report
- Parole Board Risk Assessment form
- Criminal and Traffic Conviction history
- Offender's submissions
- Prison's Offender Report to the Parole Board
- Judge's sentencing notes of 16 December 2005; and
- Relevant Police Summaries of Fact.

4.34 Ms H, the Nelson CPPS Probation Officer, told me she became aware of Offender XX's true identity of Offender ZZ in October 2006 after his conviction that month in respect of the driving offences referred to above and when the matter came back to her with a Community Work Order in the name of Offender ZZ. Until that time Ms H had no knowledge of Offender ZZ's birth name. To some extent that explains why Ms H had no knowledge that 'Offender XX' was appearing in Court for sentencing on 11 October 2006; he appeared on that date under the name of Offender ZZ which was a name which she was not familiar with. I discuss this further below. I was advised by Ms H that no other staff member in the Nelson CPPS Office was aware of Offender XX's birth name of Offender ZZ or otherwise knew who he was.

4.35 Also on 21 August 2006 Detective Senior Sergeant E, Manager of the Witness Protection Unit was advised of probation details for Offender ZZ. That information was provided by Detective Senior Sergeant A.

4.36 The following day Constable T (Witness Protection Unit) telephoned Offender ZZ and told him of the need to report to his Probation Officer, Ms H, for the first time on Friday 25 August 2006.

- 4.37 Offender ZZ reported to Senior Probation Officer Ms H on Friday 25 August 2006 as required. He advised Ms H he had contact with a Witness Protection Unit Case Officer twice a week. Offender ZZ asked Ms H about outstanding fines under his old name and indicated that he wanted to pay these. Offender ZZ was issued with a Written Instruction To Report ('WITR') next to his Probation Officer on 1 September 2006.
- 4.38 On 1 September 2006, within one week of Offender ZZ having first reported, Ms H visited Offender ZZ at his home. Offender ZZ's partner was also present.
- 4.39 On 8 September 2006 Constable R attempted to telephone Offender ZZ but managed only to speak with his partner as Offender ZZ was not at home.
- 4.40 Offender ZZ next reported to Ms H on 18 September 2006. He was at that time inducted into the conditions and requirements of his Parole and he was made fully aware of his responsibilities. Thus, Offender ZZ's induction was not completed until 24 days after he had first reported to the Probation Officer in Nelson (outside the two week timeframe required as per CPPS Policy and Procedure). Offender ZZ's signature is 'Offender XX' on the CPPS Supervision Induction Checklist that was completed. Offender ZZ advised Ms H that he had appeared in Court under his old name and as a result was now being pursued for outstanding fines. Offender ZZ was issued with a Written Instruction to Report again on 25 September 2006 (in the name of Offender XX).
- 4.41 After her meeting with Offender ZZ Ms H telephoned CPPS Head Office Operations Adviser, Ms G, querying the issue of Offender ZZ's outstanding fines. Ms G referred Ms H to Witness Protection Unit Officer Constable R, to discuss the issue of the outstanding fines (after noting that the Judge's sentencing notes stated that all outstanding fines were remitted).

Failures to Report to Probation

- 4.42 Offender ZZ failed to report to his Probation Officer, Ms H, on 25 September 2006 as instructed. Ms H telephoned Offender ZZ that day. Offender ZZ advised Ms H that he had just finished work and was on his way to report. Ms H rescheduled the reporting to the following day, 26 September 2006. Also on 25 September 2006 Ms G emailed Detective Senior Sergeant A and advised that Offender ZZ was to appear in Court on driving charges during the coming week. He was advised that the specific offences in question and offence dates were not known to CPPS. Ms G also noted the outstanding fines issue.
- 4.43 In response to this information, two days later, on 27 September 2006, Detective Senior Sergeant A emailed Ms G (the CPPS Head Office Operations Adviser) in response to her email and indicated that the Nelson Probation Officer (Ms H) should deal with the issue of Offender ZZ's outstanding fines when Offender ZZ next appeared in Court. That was the extent of his response.
- 4.44 I note at this point that Ms H was unaware that there was a Police Liaison officer in Nelson.
- 4.45 Offender ZZ duly reported to Ms H on 26 September 2006. An alcohol and drug assessment was booked for 4 October 2006 in accordance with the relevant special condition of Offender ZZ's Parole. Offender ZZ informed Ms H of his concern about a Court appearance on 11 October 2006 but advised that he would follow this up with a Witness Protection Unit contact. Offender ZZ's current employment in Nelson and the fact he had enrolled in an educational course (also relevant to satisfying one of the Special Conditions of his Parole), were discussed. Offender ZZ was issued with a WITR on 10 October 2006.

- 4.46 On 28 September 2006 information was received by the Witness Protection Unit, from a private source concerning Offender ZZ's drinking.
- 4.47 On 2 October 2006 Constable R spoke with Ms H and requested assistance in sorting out outstanding fines (documentation was required in Offender ZZ's birth name).
- 4.48 Offender ZZ reported to his Probation Officer, Ms H, again on 10 October 2006. He informed her that he was due to appear in Court the following day (11 October 2006) in respect of his offending on 26 July 2006. As I have said, Ms H told me that at that time she was unaware of Offender ZZ's true identity of Offender ZZ. Ms H telephoned Ms G again about the issue of outstanding fines. Ms G advised Ms H to do an oral report for the Court. Ms H also contacted Constable R who assured her that the outstanding fines issue was sorted out. A WITR was issued to Offender ZZ to report next on 31 October 2006.
- 4.49 In the course of my Inquiry I learned from CPPS staff that there is no Risk Assessment form designed to apply to a person in Offender ZZ's situation. I discuss that issue further below.

October Conviction

- 4.50 On 11 October 2006 Offender ZZ was convicted and sentenced on charges of failing to stop and reckless driving (offending on 26 July 2006). Offender ZZ appeared and was sentenced under the name of Offender ZZ. He was represented by Mr Mark Dollimore, Solicitor of Nelson. Sergeant D was the Police Prosecutor. Judge Zohrab sentenced Offender ZZ to 180 hours community work. He was also disqualified from driving for a period of 18 months and the words "Final Warning" were placed on his record. Judge Zohrab made it clear to Offender ZZ that if he drove like that again he would "go to prison". A final name suppression order was made.

- 4.51 At the time of his appearance the Court was advised that Offender ZZ was on the Witness Protection Programme. Mr Dollimore presented a letter to the Judge written by or on behalf of his client. The letter was witnessed by Mr Dollimore. Also present in Court on this occasion was the Court Probation Officer in Nelson, Mr AA. Ms H told me that Mr AA was the person she was to speak to concerning management of a Protected Witness. I was told Mr AA had previously managed the parole of a Protected Witness. CPPS has confirmed that Mr AA was aware of Offender ZZ's involvement in the Witness Protection Programme from November 2006 but not earlier.
- 4.52 Offender ZZ's offending and Community Work sentence was entered into the CPPS Offender database (IOMS) via the Ministry of Justice / Courts interface under the name of Offender ZZ.
- 4.53 Upon receipt of a Community Work order in the name of Offender ZZ, and as a result becoming aware of Offender XX's birth name (Offender ZZ), Ms H telephoned CPPS Head Office Operations Adviser, Ms G in Wellington and asked if recall of parole action should be considered against Offender ZZ. Ms G responded that she was "not sure" if recall action should be considered but said she would get back to Ms H with a response. There is no record that Ms G did respond to Ms H about the issue of whether recall action should be considered at this stage.
- 4.54 On 17 October 2006 a Community Work Placement Assessment was completed for Offender ZZ and he signed (under the name Offender XX) a Community Work Induction Checklist.
- 4.55 On 19 October 2006 Offender ZZ was apprehended by Police in Nelson for driving with excess breath alcohol. Offender ZZ used the name Offender XX when he spoke to Police. His driver's licence was in the name of Offender XX. As a consequence, he was charged by Police under the name of Offender XX. The Witness Protection Unit was not notified of this offending by anyone from CPPS. At this time Offender

ZZ was not fingerprinted because the offence for which he was stopped (excess breath alcohol) is not an arrestable offence and accordingly he was not subjected to the same screening (fingerprints and photographs) as he would have been had he been arrested. I note at this point that Ms G did email Detective Senior Sergeant A in November 2006 when she advised him of Offender ZZ's offending and intended Court appearance on 7 November 2006.

- 4.56 Offender ZZ was inducted into Community Work agency placement on 20 October 2006. As stated, the offending for which he had been sentenced on 11 October 2006 was entered in IOMS under the name Offender ZZ. However, Offender ZZ's Community Work sentence was managed by a paper file only in the name of Offender XX; no electronic records were maintained for Offender ZZ's Community Work sentence. All relevant records / documentation pertaining to this part of the sentence were kept on a paper file. Ms H told me that she kept the paper file locked in a safe in a different part of the building where she worked.
- 4.57 On 26 October 2006 Offender ZZ reported to his Nelson CPPS Community Work Probation Officer, Ms V. As far as I have been able to ascertain Ms V was not aware of Offender XX's birth name and knew of him only by the name of Offender XX. Ms H told Ms V that Offender XX was on the Witness Protection Programme but, as I understand it, she did not tell her Offender XX's birth name.
- 4.58 Offender ZZ was inducted into the Community Work agency, and attended a three-way meeting between CPPS and the Community Work sponsor. Offender ZZ signed a direction to report for his first day of Community Work on 31 October 2006. Offender ZZ told his CPPS Community Work Probation Officer (Ms V) that he was due to appear in Court in November 2006 on a charge of driving with excess breath alcohol. It was that day Ms H advised Ms V that Offender XX was on the Witness Protection Programme and of the need to keep that information confidential. Ms V was not advised that the name Offender

XX was an alias for the name Offender ZZ. There are case notes which show there was liaison between Offender ZZ's Parole Probation Officer (Ms H) and his Community Work Probation Officer (Ms V) in relation to the Community Work sentence Offender ZZ had received. It seems clear that from 26 October 2006 Ms V and Ms H both knew that Offender XX was to appear before the Court on 7 November 2006 on a charge of excess breath alcohol. Ms H knew both names but Ms V knew only the name Offender XX.

- 4.59 On 31 October 2006 Offender ZZ failed to report for Community Work. He also failed to report to Ms H as instructed. It seems that this information was not conveyed to any Police personnel involved with the Witness Protection Programme.
- 4.60 On 3 November 2006 Offender ZZ reported to his Community Work Probation Officer, Ms V, and produced a medical certificate that certified him unfit for work for four days from 30 October 2006. Offender ZZ was issued with a WITR next (to Ms H) on 9 October 2006; that appears to have been an error and should have read 9 November 2006.
- 4.61 On 6 November 2006 Offender ZZ again reported to his Community Work Probation Officer, Ms V. He advised Ms V that he would not be able to commence his Community Work the following day (7 November 2006) because he would be appearing in Court on an excess breath alcohol charge. It was agreed he would now start Community Work on 9 November 2006.
- 4.62 It seems clear that on 6 November 2006 Nelson Probation advised Ms G in the Wellington CPPS Office that Offender ZZ was to appear in Court the following day, on 7 November 2006.
- 4.63 That is because on 6 November 2006 Ms G, the CPPS Head Office Operations Adviser emailed Detective Senior Sergeant A, a

memorandum confirming the details of Offender ZZ's sentence received on 11 October 2006. Ms G advised that although that offending and sentence (of Community Work) had been recorded electronically in IOMS under the name Offender ZZ, the Community Work sentence would be managed as a paper file under the name of Offender XX.

4.64 In that same email Ms G advised Detective Senior Sergeant A that Offender ZZ had informed his counsel at his sentencing hearing on 11 October 2006 that he was on the Witness Protection Programme and that his counsel advised the Court accordingly. It was noted that when summing up the Judge (Judge Zohrab) had informed Offender ZZ that he should be making the most of his new identity. Ms G also advised Detective Senior Sergeant A that the Nelson Probation Officer had informed her that Offender ZZ was due to appear in the Nelson District Court again on 7 November 2006 (ie the following day) on an excess breath alcohol charge under the name of Offender XX, and that the Probation Officer had concerns about continuing to manage Offender ZZ's Parole and his disregard for keeping a low profile while on the Witness Protection Programme.

4.65 Unfortunately Detective Senior Sergeant A did not act on or inquire into the circumstances surrounding the fact that Offender ZZ was facing a new charge and was due to appear in Court again on 7 November 2006. It seems Detective Senior Sergeant A never passed the information in Ms G's email to the Witness Protection Unit who were managing Offender ZZ as a Protected Witness. Detective Senior Sergeant A has fairly acknowledged that he took no action in relation this email however he cannot be certain that he opened the email on the day he received it (6 November 2006). He believes that if he opened it prior to 7 November 2006 he would have been aware of its implications and would have taken positive action.

7 November Court Appearance

4.66 On 7 November 2006 Offender ZZ was convicted in the District Court at Nelson of driving with an excess breath alcohol on 19 October 2006. He was convicted and sentenced under the name Offender XX. Sergeant B prosecuted Offender ZZ (as Offender XX) for a second time and Offender ZZ was represented again by his Solicitor, Mr Dollimore. Sergeant B told me that he did not realise that Offender XX was the same person he had prosecuted on 11 October 2007 under the name of Offender ZZ; that on both occasions it was a List Court where anywhere between 50 and 100 files were being dealt with. The Court transcript shows that Sergeant B advised the Court that Offender XX had not previously appeared before the Court (which is the information that would have been held on the prosecution file for 'Offender XX'); and Mr Dollimore made no comment in relation to that or any other matter pertaining to Offender XX's identity. Judge Zohrab sentenced Offender XX to a fine of \$500 and he was disqualified from driving for six months (and Court Costs of \$130). In the course of my Inquiry I established that the Court was not aware at the time of sentencing, of Offender XX's identity or criminal/traffic histories. I discuss the issues surrounding Offender ZZ's appearance on 7 November 2006 in more detail below.

4.67 Offender ZZ failed to report to his Probation Officer, Ms H, on 9 November 2006. The Probation Officer's case note of this date records that was the second occasion on which Offender ZZ had failed to report. Ms H noted that she had telephoned Ms G, CPPS Head Officer Operations Adviser and that Ms G was informing 'the Police Contact' of the new offending as she said 'the integrity of the Witness Protection Programme was in question'. Ms H also asked Ms G whether she should proceed with recall or breach action against Offender ZZ in respect of his Parole. Ms G advised Ms H to take breach action in relation to Offender ZZ's failure to report. There is no evidence that the

possibility of taking recall action against Offender ZZ was seriously considered at that time.

4.68 On 20 November 2006 Ms G emailed the Nelson Probation Officer after Ms H had reported having had difficulties filing an Information (ie a charge) for a breach of Parole electronically because the Offender XX identity did not exist in the IOMS system. An IOMS identity is a prerequisite for transmitting breach information into the Court system and for the creation of a unique Criminal Record Number (CRN) for such an offence (breach of parole). Ms G advised Ms H to complete a 'paper breach' using the Microsoft Word Template. Ms G told Ms H that 'the only complication will be explaining to the Judge why such a method of breach has been done, although this can be done in a separate confidential memo to the Judge'. Ms G also emailed Detective Senior Sergeant A that day (20 November 2006) and confirmed that Offender ZZ would be breached for not having reported to his Probation Officer since his Court appearance on 7 November 2006.

4.69 On 1 December 2006 Ms H telephoned Constable R and told him there had been no contact with Offender ZZ and therefore, breach action would be taken. Ms H noted that Constable R told her he would try to contact Offender ZZ as he was 'not returning my calls'. Ms H noted further that she would proceed with breach action 'in Word as he is not loaded on IOM's due to Witness Protection status'.

4.70 I note that the last recorded contact that the Witness Protection Unit had with Offender ZZ prior to the fatal collision on 5 December 2006, was on 22 August 2006. That contact was a phone call between Offender ZZ and his secondary handler. The last recorded contact between Offender ZZ and his primary handler was 14 August 2006. There was contact between the Witness Protection Unit and Offender ZZ's partner in September and October 2006. The requirement for monthly contact (at least) by Offender ZZ which was specified in the agreement which Offender ZZ signed with Police on his admission to the Witness

Protection Programme, was not complied with. Despite this non-compliance I do note that Constable R was completing monthly reports on Offender ZZ. The usefulness of those reports must be limited or compromised if there were failures to comply with the monthly reporting requirement.

- 4.71 Four days later, on 5 December 2006 Ms H attempted to visit Offender ZZ at his home address in Nelson at 2.30pm. She spoke to another male at that address (flatmate) who indicated that Offender ZZ was sleeping and that he was not prepared to wake him. Ms H considered the male occupant to be aggressive and under the influence of drugs or alcohol. For safety reasons she did not attempt to wake Offender ZZ and instead issued him with a WTR to her on 12 December 2006.

Fatal Collision

- 4.72 It was at 10.40pm that night, 5 December 2006 that Offender ZZ was the driver of the speeding motor vehicle involved in the head-on collision at Richmond, Nelson that caused the death of Ms Ashton, aged 20 years. Offender ZZ was hospitalised following the accident. Ms Ashton underwent surgery but died approximately three hours after the accident as a result of the extensive injuries she had received. Detective Sergeant C advised me that when Offender ZZ was spoken to by Police after the collision he gave the name Offender XX. It was not until several days later that it became clear that Offender XX was in fact Offender ZZ. That information came about as a result of local Police Liaison Officer, Detective B advising Detective Sergeant C of Offender ZZ and his participation in the Witness Protection Programme. The issue was raised with Offender ZZ during the course of Detective Sergeant C's interview with him at which Mr Dollimore was present. During the course of that interview Offender XX accepted/disclosed that his birth name was Offender ZZ.

- 4.73 Unaware of Offender ZZ's offending the previous night, on 6 December 2006 the Nelson Probation Officer, Ms H laid a paper application for breach of Parole in the District Court at Nelson. A hearing date was allocated for 30 January 2007. That day Offender ZZ's Community Work Probation Officer, Ms V, was telephoned by Offender ZZ's mother and advised that Offender ZZ had been hospitalised following a fatal car crash the previous night. Ms V advised Offender ZZ's Parole Probation Officer, Ms H of this. Constable R also contacted Ms H and advised her of Offender ZZ's involvement in the fatal crash the previous night. Constable R informed Ms H that a charge of manslaughter was likely to be laid against Offender ZZ.
- 4.74 On 13 December 2006 the Registrar of the District Court at Nelson telephoned Ms H and advised that he had rejected the paper information (charge) for breach of Parole on the basis that it had not been entered electronically through the Courts / CPPS interface. Ms H telephoned Ms G and sought advice on the breach process. Ms G advised that she would follow up on that issue. Ms H case noted that 'at this stage waiting to hear back from G re: breach'. That day Ms G emailed the National Witness Protection Programme Coordinator in Wellington, Detective Senior Sergeant A and sought advice on the breach process. She also queried whether Police would be laying charges as a result of the fatal accident on 5 December 2006 and if charges were laid, she stated that CPPS would need to consider taking 'recall action'. This was Ms G's first mention of possible recall action being taken against Offender ZZ.
- 4.75 Detective Senior Sergeant A emailed Ms G the following day and told her that he understood charges would be laid against Offender ZZ; possibly a manslaughter charge. He advised that he could not offer a solution to the problems which had arisen for Ms H when she had attempted to lay a paper information for a breach of Parole 'however that may pale into insignificance following these new charges'. Clearly that was an issue for Probation. Detective Senior Sergeant A noted that

Offender ZZ may now need to be recalled instead of breached for parole. He later emailed Ms G and confirmed that Offender ZZ would be charged with manslaughter. Ms G updated Ms H as to this by email and Ms H responded noting that recall action was likely. Police records show that Offender ZZ pleaded guilty to a charge of manslaughter at a scheduled depositions hearing that day (14 December 2006). The Nelson Court File suggests that the guilty plea was not formally entered until May 2007.

- 4.76 On 19 December 2006 Ms G emailed Detective Senior Sergeant A to confirm that Offender ZZ would be appearing in Court that day. In addition she advised that an application for recall would be 'sworn' on 20 December 2006 (ie the following day). Offender ZZ appeared in Court under the name of Offender ZZ that day; for a bail hearing on the manslaughter charge and other related offences. Offender ZZ was remanded in custody to 19 January 2007.

Application for Recall

- 4.77 The following day, 20 December 2006, Ms H filed with the Parole Board an application for Offender ZZ's recall to prison pursuant to s 60(2) of the Parole Act 2002. The application was made in the name of Offender XX. Offender ZZ's alias was mentioned in the supporting affidavit of Ms H where there is reference to the fact that Offender XX was on the Witness Protection Programme and was known as Offender XX. Ms H also completed a CPPS Initial Incident Report in respect of Offender ZZ's offending on 5 December 2006 and the recall action taken as a result. Having reviewed the application for recall and the supporting affidavit of Ms H to which relevant information as to Offender ZZ's prior offending is attached, I note that while Offender ZZ's conviction history records his offending and sentence on 11 October 2006 (reckless driving) there is no record of his conviction and sentence (under the name of Offender XX) on 7 November 2006 (excess breath alcohol charge). However, in the Police Summary of

Facts for the manslaughter charge reference is made to Offender ZZ having appeared as Offender XX in November 2007 and sentenced as a first offender because the Court was not advised of his true identity.

- 4.78 Offender ZZ was discharged from the Witness Protection Programme as from 20 December 2006. I note that Corrections / CPPS were not advised of that until 25 June 2007 when CPPS Senior Operations Adviser, Mr I emailed Detective Senior Sergeant A to clarify the date of Offender ZZ's removal from the Witness Protection Programme.
- 4.79 On 21 December 2006 the Parole Board (Judge Unwin, Convenor) issued an Interim Recall Order and a Warrant to Arrest and detain Offender ZZ. The Parole Board's Notice to Offender of Recall is dated 28 December 2006. It would appear that Offender ZZ was already in custody at the time the Parole Board made the Interim Recall Order, on remand pending his next appearance in Court on 19 January 2007 as set out above.
- 4.80 Offender ZZ (under name Offender XX) appeared before the Parole Board on 12 January 2007. The hearing was adjourned to 16 February 2007 as Offender ZZ was facing further charges and was to appear on 19 January 2007. Offender ZZ requested an adjournment to enable him to talk to his lawyer. It is recorded in the Parole Board decision that Offender ZZ "consented to the adjournment".
- 4.81 The Parole Board (Judge Henwood, Convenor) made a Final Recall Order on 16 February 2007 pursuant to s. 66(1) of the Parole Act 2002. Offender ZZ was recalled to continue serving his sentence of imprisonment received on 15 December 2005.
- 4.82 On 31 May 2007 Offender ZZ was sentenced to five years and six months imprisonment for manslaughter, driving while disqualified (x 2), driving dangerously causing death or injury, and attempting to pervert the course of justice. This sentence resulted in the termination of

Offender ZZ's community work sentence. Police, having instructed the Crown Solicitor in Nelson, sought an order from the Court for suppression of Offender ZZ's involvement in the Witness Protection Programme. Justice Simon France suppressed the name Offender XX and any reference to the Witness Protection Programme but not the name Offender ZZ.

- 4.83 On 6 June 2007 the Hon Dr Nick Smith, MP for Nelson contacted the Nelson Office of CPPS and asked (pursuant to the Official Information Act) "was Offender ZZ subject to a sentence of Parole?" Because of Offender ZZ's involvement with the Witness Protection Programme CPPS advised that they did not regard this as a "straightforward request". While CPPS were completing inquiries into this issue CPPS learnt that a name suppression order had been made which impacted on the release of any information that linked the names / identities Offender XX and Offender ZZ.
- 4.84 On 18 June 2007 Justice Simon France in the High Court at Nelson issued a Minute clarifying the Orders he had made on 31 May as there had been media interest. In his Minute Justice France noted that he had suppressed all details relating to Offender ZZ's conviction and sentence for driving with excess breath alcohol handed down to him under the name of Offender XX on 7 November 2006, and all details linking the name Offender XX to Offender ZZ. The name Offender ZZ was not suppressed from publication.
- 4.85 On 24 June 2007 Mrs Judith Ashton, Debbie Ashton's mother wrote to the Prime Minister seeking answers to several questions concerning Offender ZZ's offending, Parole and placement on the Witness Protection Programme. A draft response was prepared but it was not finalised and sent to Mrs Ashton.

- 4.86 On 29 June 2007 Police implemented a new system of Notification Alerts for existing Witness Protection Programme participants. I discuss this in more detail below.
- 4.87 On 3 August 2007 the General Manager of CPPS wrote to Mrs Ashton and acknowledged that CPPS should have taken enforcement action against Offender ZZ (recall action following his conviction in November 2006) and apologised for not having done so. Prior to sending that letter to Mrs Ashton the General Manager of CPPS had undertaken an internal inquiry within CPPS.
- 4.88 On 2 August 2007 Police met with the Ashton family to discuss matters concerning the management of Offender ZZ while he was on the Witness Protection Programme.
- 4.89 As at the date of this report Offender ZZ remains a sentenced prisoner.
- 4.90 The National Crime Manager at Police has advised me that in response to concerns expressed by the Ashton family personally and / or on their behalf by the Hon Nick Smith MP, Police recently sought an amendment to the suppression orders made by Justice Simon France in May 2007. I discuss that matter in more detail below.

5 FINDINGS

5.1 I deal with each of the Terms of Reference as follows:

Term of Reference 1

“The relevant facts whereby the driver was in a position to drive a motor vehicle on 5 December 2006 despite his previous offending, in particular but not limited to the following:

The circumstances in which the driver was able to make use of his new identity under the Witness Protection Programme enabling him to be treated as a first offender in November 2006 and the appropriateness thereof;”

5.2 I have dealt in detail with the facts of the matter above at Section 4 above.

5.3 I have found that the circumstances in which Offender ZZ was able to make use of his new identity enabling him to be treated as a first offender in November 2006 were:

- Offender ZZ’s driver’s licence was issued in the name of Offender XX upon his name being changed;
- Offender ZZ did not disclose his birth identity of Offender ZZ to the Police when he was apprehended in October nor did he disclose it to the Court or when he appeared for conviction and sentence on 7 November. He used the new identity of Offender XX;
- Offender ZZ was not fingerprinted when he was charged with driving with excess breath alcohol (a non arrestable offence for which fingerprinting is not taken);
- The computer system in use did not have the functionality to link the name Offender ZZ with the name Offender XX;

- Offender ZZ failed to comply with his agreement with Police and the terms of his witness protection plan, in particular he failed to report on a monthly basis from August 2006 and Police failed to follow up on his non compliance;
- The Nelson Probation Officer knew that Offender ZZ was to appear in Court on 7 November 2006 under the name of Offender XX and conveyed that information to her Operations Adviser in Wellington. The Operations Adviser referred to that fact in a memorandum sent to Police National Coordinator of the Witness Protection Programme on 6 November 2006. However, assuming that he read the email on the day it was sent, the Police National Coordinator did not take any action in relation to that information, specifically, he did not pass this information to the Witness Protection Unit. The CPPS Operations Adviser did not follow up in any way;
- Witness Protection staff did not provide an appropriate level of monitoring of Offender ZZ upon his release from Prison and / or upon his relocation to Nelson;
- Offender ZZ's lawyer, Mr Dollimore failed to advise the Court on 7 November 2006 that his client's name of Offender XX was an alias for Offender ZZ and the fact that Offender ZZ had a criminal and traffic history and was a participant in the Witness Protection Programme was not known by the Court. Accordingly Offender ZZ was dealt with as a first offender.

- 5.4 I assess the appropriateness of those circumstances in my findings in relation to the failures of systems, practices and procedures below.

Term of Reference 2

“Whether and to what extent there were failures in the systems, practices or procedures of those agencies who dealt with this matter including (but not limited to) Police, Corrections, Justice (Courts), or legal processes (including legal representation) that caused or contributed to the driver being in a position to drive a vehicle on 5 December 2006 and thereby cause Ms Ashton’s death;”

Systems, Practices and Procedures

Failure by CPPS and Police to comply with standards and procedures

- 5.5 Those responsible for managing Offender ZZ as a protected witness and as a parolee received no clear written instructions about what should occur if Offender ZZ’s placement started to break down or he failed to comply with his parole conditions, committed offences or otherwise failed to comply with the agreement he had entered with the Witness Protection Programme. The Guidelines which exist at Police are outdated and were not followed. The Guidelines at CPPS are cumbersome, unclear and do not provide for an adequate direct line of communication between those actually responsible for supervising / monitoring Offender ZZ in a practical ‘on the ground’ sense.
- 5.6 The existing Witness Protection Policy and Guidelines are dated 1994 and are out of date in many respects. New Guidelines have been in draft for some time but have not been finalised.

Lack of communication within and between agencies

5.7 One of the most significant issues I have found during the course of this Inquiry is the lack of adequate communication between the agencies responsible for Offender ZZ's management. There was poor communications and consultation with and about Offender ZZ during the relevant period by the CPPS, (National Office and the local District Probation Service) and Police (at the National Coordinator's office and the Witness Protection Unit). In my view this has arisen for three main reasons:

- the Guidelines / Policy and Protocols in place directing staff in terms of who they should communicate with were unclear and in some instances inappropriate;
- there was no effective supervision of those having hands on responsibility for managing or monitoring Offender ZZ;
- there has been an over-sensitivity on the part of all concerned but particularly CPPS staff to the covert nature of the Witness Protection Programme. This has had the effect of inhibiting those responsible for managing Offender ZZ from communicating adequately.

5.8 In my view it should be possible to manage the confidential nature of the Witness Protection Programme in a way that does not inhibit the necessary flow of relevant information between those who need to know. In this case there were a number of key people who should have had a direct line of communication and they did not. The Nelson Probation Officer should have been communicating directly with those in Police who were responsible for the operational monitoring of Offender ZZ. Instead she was communicating with Police indirectly through an Operations Adviser in Wellington who in turn was communicating with the National Coordinator in Wellington. The National Coordinator was expected to convey information to the Witness

Protection Unit staff who were responsible for the operational monitoring of Offender ZZ.

5.9 Not only was there poor communication between Police and CPPS, there was also poor communication within Police (at Wellington National Headquarters and the Witness Protection Unit). The flow of information between the National Coordinator and the Witness Protection Unit was inadequate. This was most dramatically demonstrated by the failure of the National Coordinator to pass on information which CPPS sent him on 6 November 2006 that Offender ZZ was due to appear in the Nelson District Court on 7 November 2006 under the name Offender XX. This information was not passed on to the Witness Protection Unit staff and no action was taken by Police to ensure Offender ZZ was charged and appeared under his birth name and was dealt with accordingly. Detective Senior Sergeant A's omission in this respect was significant. That said, it should not be forgotten that the structure of Detective Senior Sergeant A's position as National Coordinator was such that he was carrying out a management role in a number of different areas of Policing; was physically located in Wellington at a considerable distance from the Witness Protection Unit and his other duties often took him out of Wellington. Also, he cannot be certain he opened the email on 6 November. Further, the computer system in place at that time did not provide any means of ensuring that offending by a witness would be picked up. Ms G's email of 6 November did not highlight the issue concerning Offender ZZ's forthcoming Court appearance as significant and the email was not followed up by CPPS. Notwithstanding those matters, Detective Senior Sergeant A accepted that he should have taken some action in relation to the email.

5.10 No information was given to the District Commander in Nelson advising that there was a protected witness in his District. While some information was provided to the Officer in Charge of the CIB, in my view it would be appropriate for the District Commander to have at least

an oral briefing concerning the location of the protected witness in his / her District.

Blurred line of command within Police Witness Protection Programme

5.11 There was confusion in the management of operational aspects of the Witness Protection Programme arising from a lack of clarity about the role of the National Coordinator at Police National Headquarters. This led to poor communication between the office of the National Coordinator (based in Wellington) and the Witness Protection Unit. Staff spoken to at the Witness Protection Unit told me of their concern about blurred lines of command and their concern about an inadequate flow of communication between the National Coordinator and their office.

Inadequate monitoring and supervision of Offender ZZ by Witness Protection Programme

5.12 There was no record of contact with Offender ZZ after 22 August 2006 (until after the December 2006 fatal collision) and the contact on 22 August was a telephone call with the secondary handler, Constable T. The last recorded contact before the collision with the primary handler was 14 August 2006. I was told that there may sometimes be phone contact with witnesses which might not be recorded however it has not been seriously suggested that the handlers in this matter had contact with Offender ZZ after 22 August which was not recorded. Not only was there an obligation in terms of the Agreement that there be monthly contact, the fact that Offender ZZ was offending should have necessitated increased contact. There was no contact with Offender ZZ in relation to the October conviction or the November conviction. In my view there should have been increased contact and monitoring of Offender ZZ as a result of those convictions and consideration given to whether Offender ZZ should remain on the Programme. There appears

to have been no consideration given to that issue or if there was, certainly no documentation was created showing the decision making process.

5.13 There was inadequate oversight of staff at the Witness Protection Unit responsible for monitoring Offender ZZ. I have found there was inadequate monitoring of Offender ZZ as a protected witness; the requirement that a witness make contact with the Witness Protection Unit at least monthly is, in my view insufficient. There needs to be a greater level of effective monitoring to ensure compliance with the terms of engagement with the Witness Protection Programme. However, in this case there was failure to monitor Offender ZZ at even that level of monitoring. As stated, there was no contact between Offender ZZ and the unit between 22 August and December 2006. There was contact between Offender ZZ's partner and the Unit more frequently but that is not a substitute for contact with Offender ZZ. Offender ZZ's handler was supervised by a more senior Police Officer (an NCO) who in turn reported to the Unit Manager. Despite that, no one appears to have appreciated that there was an inadequate level of monitoring (ie monitoring was not in terms of the Guidelines) or of an increase in risk associated with offending. The Manager of the unit appears not to have been aware of this very low level of monitoring of Offender ZZ or of what, if any steps were taken to effectively follow up on risk factors. There does not appear to have been any effective management mechanism to measure compliance with the Witness Protection Programme Guidelines. Further, there was inadequate documentation concerning contact with Offender ZZ.

5.14 Constable R was completing monthly reports on Offender ZZ. As I indicated above, the usefulness of those reports must have been limited or compromised because of the failure to comply with the monthly reporting requirement.

5.15 When Offender ZZ was arrested in July 2006 he was initially charged with unlawfully getting upon a motorcycle. That charge was subsequently withdrawn. I have not been able to determine why that occurred or who made that decision. There may have been perfectly legitimate reasons for that to have happened however, as this case demonstrates when there is no documentation recording the reasons why significant decisions have been made it becomes impossible to subsequently explain or justify actions. This is particularly so where it is possible to suggest that a protected witness might get special treatment because of his status.

Indications of escalating risk

5.16 There were inadequate assessments of Offender ZZ's risk at various stages in particular at the time of his apprehension in July and October 2006 and the subsequent convictions in October and November respectively.

5.17 There was no effective assessment of Offender ZZ's risk to the community after either the July or October offending. There was nothing documented to suggest anyone turned their mind to that issue. It is unclear when the Witness Protection Unit first became aware of Offender ZZ's apprehension by Nelson Police in July. Certainly no formal assessment of his risk seems to have been done. The same situation occurred in relation to the October apprehension; in relation to that offending the Coordinator in Wellington was only told about it by CPPS on 6 November 2006 and the Witness Protection Unit did not know of that offending at all until after the Court appearance. As referred to above Ms H did raise the issue of enforcement action following Offender ZZ's offending when she canvassed the possibility of enforcement action with Ms G on 11 October and 9 November 2006. However no enforcement action was taken in October 2006 and in November 2006 it was suggested Ms H should take breach action only.

- 5.18 Between first reporting to his Probation Officer in Nelson on 25 August 2006 and failing to report on 9 November 2006, Offender ZZ had largely reported to his Probation Officer, Ms H, as instructed and in part addressed his special conditions of release. However, Offender ZZ failed to report to his Probation Officer from 9 November 2006 until his offending on 5 December 2006. This followed two occasions of further offending under both his Offender ZZ and Offender XX identities and in my view clearly signalled an escalation in his non-compliance and risk of reoffending.
- 5.19 Offender case notes prepared by the Probation Officer, Ms H, identify the escalation in Offender ZZ's risk of reoffending after his conviction for further offending in October and November 2006 and his failure to report during the month leading up to his 5 December 2006 offending. As noted, on 11 October 2006 and 9 November 2006 the Probation Officer case-noted that advice was sought from the Head Office Operations Adviser, Ms G, as to the type of enforcement action she should take in response to Offender ZZ's increasing non-compliance and his risk of re-offending. In my view more serious consideration should have been given and documented to the taking of recall action on both those occasions. While the CPPS Head Office Operations Adviser relayed concerns to the National Police Witness Protection Programme Coordinator, no consultation with any CPPS Head Office manager occurred. Ms G's main response to Ms H's concerns focused on the technical problems associated with laying a breach action in Court. She made no mention of possible recall action until 13 December 2006. No steps were taken by Police to properly assess his increased risk at that stage.

Inadequate use of Liaison Officer

- 5.20 There were no formal instructions provided to the Nelson Police Liaison Officer as to what his role should be and who he should communicate with and when. The Liaison Officer was appointed to that role by the

OC CIB in Nelson at the request of the Witness Protection Unit. Detective B told me he specifically asked Witness Protection personnel what would happen if Offender ZZ was arrested and whether there was any expectation he would have a monitoring role in respect of Offender ZZ. He was told his role was simply as a local contact if the unit could not locate Offender ZZ and that he may have to run errands on behalf of the unit and that he was not expected to keep 'tabs' on Offender ZZ.

- 5.21 The role of the Police Liaison Officer in Nelson was largely ineffective through no fault of that officer. Rather, because there was no expectation on the part of the Witness Protection Unit that the Liaison Officer would have any role or responsibility to monitor Offender ZZ. In my view this was inappropriate and there is every reason why the position of Liaison Officer in the Host District should be enhanced to provide some level of monitoring and an expectation of communication both with the Probation Service and with the Witness Protection Unit. I consider that can be done without compromising the integrity of the Witness Protection Programme. CPPS and, in particular, the Senior Probation Officer, were unaware of the existence of the Police Liaison Officer and he was unaware that Offender ZZ was on parole. The Witness Protection Guidelines contemplate a greater level of involvement by the Liaison Officer than was carried out in this case.

CPPS failed to comply with their protocols for managing a parolee

- 5.22 Offender ZZ was treated differently to other offenders because of his status as a protected witness. His placement on the Witness Protection Programme appears to have compromised a number of sentence management requirements and processes within CPPS. His sentence management was not dealt with through the CPPS IOMS computer database and the CPPS Head Office assumed coordination of his parole. This created a less than standard approach to managing Offender ZZ's parole. That said, I do not consider there was any technical or logistical

reason why Offender ZZ could not have been subject to the same key sentence management requirements for reporting, home visits, compliance and enforcement actions as any other offender on parole and as are set out in the CPPS Operations Manual.

5.23 Several factors culminated in CPPS staff managing Offender ZZ differently to any other parolee. Those factors were:

- The absence of an electronic record.
- The use of unlinked identities.
- The requirement to consult with the CPPS Head Office Operations Adviser.
- Belief that the Police were actively monitoring Offender ZZ (when that was not in fact the case as from October 2006).
- Issues of confidentiality, secrecy and offender safety surrounding Offender ZZ's involvement on the Witness Protection Programme.

5.24 After Offender ZZ first reported to Nelson CPPS on 25 August 2006 he was referred to the Nelson Alcohol and Drug Clinic on 27 September 2006. Ms H (Probation Officer), completed a home visit on 1 September 2006 within one week of Offender ZZ first reporting to her at Nelson. That was well within the two-week home visit requirement for an offender transferring to a new CPPS office. However, this was the only recorded home visit prior to an attempt by Ms H to locate Offender ZZ at the same address on 5 December 2006. While I accept the minimum standard for undertaking home visits on high risk (DP2) offenders is once every two months (CPPS Operations Manual – Part IV), in Offender ZZ's case where he had not been complying with his conditions to report to his Probation Officer since 9 November 2006, in my view Ms H should have made or attempted to make a home visit before 5 December 2006.

5.25 When Offender ZZ failed to report for the first time on 25 September 2006 the Probation Officer, Ms H, telephoned him the same day to ask why he had not reported. After she had received an adequate explanation from Offender ZZ, his reporting was rescheduled for the following day. The timing of enforcement action did not meet CPPS Operations Manual requirements when Offender ZZ failed to report on 9 November 2006. Although it seems there were problems in processing breach actions through the CPPS / Courts electronic systems, there is no direct evidence that any other form of direct enforcement action was taken until an attempted home visit on 5 December 2006.

Inadequate direction to CPPS staff as to their responsibilities

5.26 There were no adequate guidelines or protocols providing direction or instruction to the CPPS Head Office Operations Adviser or to the District Probation Officer as to their respective roles. The Operations Adviser was unclear whether she was providing direction to the Probation Officer concerning the management of Offender ZZ or whether she simply had a liaison role. The Probation Officer was equally unclear about the role of the Operations Adviser. The Probation Officer sought advice from the Operations Adviser from time to time but it is clear that the Operations Adviser was not in a position to provide that advice. She did not have the information or the skills to do so. The Guidelines that were provided were not adequate. While they provide that the Probation Officer was to advise the Operations Advisor before any action was taken should Offender ZZ fail to comply in the various respects set out in the Guidelines, simply telling the Operations Adviser was not sufficient in this case. What was needed was advice and direction to the Probation Officer as to what she should do. The Guidelines also provide that it was only the CPPS Head Office Operations Adviser that was allowed to know the true identity for Offender ZZ. It is unrealistic and dangerous for the Probation Officer directly responsible for the supervision of Offender ZZ not to know his birth name. She learnt of Offender ZZ's birth name only after his

sentencing on 11 October 2006 and only as a consequence of his community work order being made known to her.

- 5.27 The Guidelines to CPPS staff state that the communication about management of the offender was to be with the Police National Coordinator. I do not believe that was appropriate. There needed to be a direct flow of communication between those actually having some operational role with Offender ZZ; namely the District Probation Officer and the Witness Protection Unit (in particular Offender ZZ's handler). The Operations Adviser communicated with the Police National Coordinator. The difficulty arose because the information provided was being given to an officer whose role was largely a policy and liaison role rather than an operational or "hands on" role. There was therefore no direct line of communication with operational staff responsible for monitoring Offender ZZ. The effectiveness of the communication was entirely dependent on the information being passed to the Witness Protection Unit by the National Coordinator.
- 5.28 There was no adequate instruction or direction given to the Probation Officer, or CPPS Head Office setting out what should happen in the event Offender ZZ re-offended. In particular CPPS should have been told that if that happened Offender ZZ should be charged and appear in Court under his birth name. While it seems that Offender ZZ may have been told this by his handler and indeed that is what he did when he was apprehended by Police in October, there was no documentation setting out that this should occur. Offender ZZ's Probation Officer and the CPPS Operations Adviser had no idea as to what should happen when a protected witness offended.
- 5.29 It seems clear that the "covert" nature of Offender ZZ's status and the secrecy surrounding the Programme has led those involved to apply less rigour to supervision and management of an offender than would otherwise be the case.

Inadequate supervision of CPPS staff

5.30 There does not appear to have been any effective supervision of the way in which the Operations Adviser at Head Office was discharging her responsibilities in relation to this matter. Again, too much emphasis was put on the need for secrecy which led to those dealing with this matter working in silos without effective consultation and no meaningful supervision of what they were doing. Had there been greater supervision it is likely it would have become clear that the Operations Adviser was not able to carry out the duties expected of her. She neither knew what to do nor seemed to appreciate the significance of information passed on to her by the Probation Officer. I note that Ms G was not an inexperienced staff member and had had previous Probation Officer experience.

5.31 Ms H, the Probation Officer was supervised by her Service Manager, Ms U and later Mr AB. Normally a Probation Officer would be required to consult with their Service Manager when considering formal enforcement action, given the requirement for Service Managers to sign off any such action. In this case, because Offender ZZ was a protected witness Ms H was instructed by CPPS Head Office to inform the Head Office Operations Adviser on sentence management issues such as enforcement action. This was viewed by her as an over-riding requirement and led to less than the usual level of supervision by a Service Manager. No doubt the Service Manager was under the impression that there was greater than usual oversight being provided by Head Office. That was not in fact the case. This again shows there was confusion about lines of reporting and lines of communication.

5.32 There is no documented evidence of any checks made by the Service Manager on Offender ZZ's paper file held at Nelson. While the absence of IOMs functionality would not preclude the recording of any Offender Warning System (OWS) status assessment, the involvement of CPPS Head Office in the oversight of Offender ZZ appears to have been

substituted for the sentence management requirement for Service Manager consultation, decision-making and checks specified in the Operations Manual. I note that there is no written instruction held in the CPPS Operations Manual that in the case of a protected witness the sentence management requirement for Service Manager consultation and decision-making is to be substituted by oversight and management by the CPPS Head Office Operations Adviser.

Inadequate documentation and file management

- 5.33 The standard of recording and document keeping by both police and CPPS was inadequate in many respects. There was poor or no documentation setting out the reasons for decisions taken and of communications between those responsible for monitoring Offender ZZ.
- 5.34 There was no documented assessment showing the process and consideration around any risks associated with Offender ZZ's non-compliance with parole conditions or his offending.
- 5.35 There was an inadequate record of contact between the Probation Officer and the Operations Adviser at CPPS and there was no documentation showing the level of supervision by the Service Manager, of the Probation Officer, or by the Head Office Manager of the Operations Adviser. While there were some telephone conversations and email exchanges between the Probation Officer and the CPPS Operations Adviser some of those conversations were not noted.
- 5.36 As indicated above there seems to have been no enforcement by Police of the monthly requirement for contact between Offender ZZ and the Witness Protection Unit and no real rigor around the recording of contact.
- 5.37 There is no record that Offender ZZ was ever assessed by the Service Manager of CPPS against the Offender Warning System ('OWS')

criteria. Copies of Offender ZZ's parole licence, sentencing notes and conviction history located on both the CPPS Nelson and Head Office files were held but under different names. A copy of Offender ZZ's December 2005 pre-sentence report was contained on the CPPS Head Office file but not on the Nelson file. A copy was not provided by Head Office to Nelson, presumably because of a concern about the link to Offender ZZ's true identity and personal history. That said, it was clear that at least one member of the Nelson Probation staff (Ms H) became aware that Offender XX was an alias name for Offender ZZ.

5.38 Consistent with CPPS procedure, separate copies of Offender ZZ's file were held at CPPS Nelson and Head Office. The Nelson file was managed and labelled as 'Offender XX' only while the Head Office file had reference to all of Offender ZZ's three identities.

5.39 It is has been suggested that the fact that the Probation Officer was using a paper based file rather than an electronic file compromised her ability to provide effective supervision. I do not accept that. The fact that she was using a hard copy file may have been less convenient but it is not an excuse for inadequate supervision of a parolee. Ms H was managing one offender who was a protected witness. The fact that Ms H had a paper file that she had to physically locate when she wanted to make an entry about Offender ZZ or that the usual computer templates or programmes were not available as a prompt for managing Offender ZZ should not have resulted in a different or lesser level of supervision than would otherwise be provided.

Suspension of parole conditions inappropriate and related parole issues

5.40 Offender ZZ did not report to a Probation Officer for the first three months and 22 days of his release from prison while Police relocated him and created his new identity. Police sought and were given CPPS permission to suspend Offender ZZ's parole conditions by the then

CPPS Head Office Operations Adviser (Ms S). It seems that the decision was made in the mistaken belief that Offender ZZ was being subjected to a greater level of supervision and monitoring from the Police than that which would have been delivered under his conditions of parole. There is no CPPS documentation evidencing this request or decision. CPPS acknowledged that this practice was not unusual in Witness Protection Programme cases

- 5.41 The decision to suspend Offender ZZ's parole conditions was, in my view, inappropriate given that CPPS staff did not have the lawful authority to suspend all conditions of his sentence or order. Such authority is limited to specific special conditions pending an application to the Parole Board or a Court when seeking a variation or cancellation of any special conditions. I was advised that the CPPS General Manager has since highlighted to Head Office staff that no authority to suspend the entire conditions of a sentence or order exists. Furthermore, I was advised that Head Office staff have also been told that any advice to field staff or managers effectively recommending against recall action must first have the approval of a senior CPPS Head Office Manager.
- 5.42 Rather than agree to the Police request to extend Offender ZZ's conditions of parole, the CPPS Head Office Operations Adviser should have consulted with her Line Manager and sought her Manager's approval. That was not done in Offender ZZ's case. Once the decision to suspend Offender ZZ's parole was made several key sentence management requirements could not be and were not met as a consequence.
- 5.43 I do not accept there is any compelling reason why the name on Offender ZZ's Parole License needed to be his prison name rather than either his new identity of Offender XX or his original birth name of Offender ZZ. There seems to be no reason in principle why either the new name or the original birth name cannot be used. To use one of those names is likely to reduce the chance of confusion arising from use

of yet a third name. In this case some confusion did arise from use of the name Q (the prison name) on Offender ZZ's Parole License.

5.44 I understand Police are consulting with the Parole Board over the possibility of having personnel involved in the Witness Protection Programme appear at parole hearings in respect of any individual who is a protected witness. I would support that initiative. It will increase the likelihood that Police will have some input into the parole conditions that are set and will ensure that the Parole Board are well aware of the background of the parolee.

5.45 All parolees released from prison are required to first report to a Probation Officer within 72 hours of release. This legislative requirement is stated as a condition of release in all parole licenses and is identified as a specific indicator of non-compliance. There is no record of Offender ZZ reporting within 72 hours of release, nor of any enforcement action being applied as a result of this non-compliance.

Application for recall of parole should have been made earlier

5.46 The CPPS response to Offender ZZ's reoffending and convictions in October and November 2006 and failure to take appropriate and necessary enforcement action was inappropriate.

5.47 On 11 October 2006, the day of Offender ZZ's first conviction for traffic offences since his release from prison and again on 9 November 2006, two days after Offender ZZ's second traffic conviction and his last failure to report, Ms H sought advice from the CPPS Head Office, Operations Adviser as to the type of enforcement action she should take. On both occasions Ms H raised the possibility of recall action. She was not provided with a response from the CPPS Head Office Operations Adviser on the first occasion and on the second occasion she was advised to take breach action only in relation to the failure to report.

- 5.48 An application for recall of Offender ZZ's parole should have been made at the time of the 7 November 2006 conviction if not earlier. Certainly proper consideration should have been given to a possible application for recall of parole or breach of parole as a result of the October conviction. There was no documentation and no consideration given to that issue at that time, either by Ms H or Ms G. It is clear that Ms H was seeking direction from Ms G at that time and I accept that Ms G's failure to give proper direction to her had a bearing on Ms H's failure to give serious consideration to a possible application for recall before December 2006.
- 5.49 In my view there needs to be zero tolerance or near zero tolerance of any protected witness who offends in other than a very minor way. This would result in an automatic and immediate application for recall of parole for determination by the Parole Board. Alternatively it could result in an immediate notification to the Parole Board for direction as to the need for enforcement action.

Role of Offender ZZ's legal counsel

- 5.50 By omitting to tell either the Court or the prosecutor of Offender ZZ's birth name in relation to the 19 October offending Mr Dollimore allowed the prosecution to proceed against Offender ZZ under the wrong name and the Court to sentence Offender ZZ on a wrong basis. Mr Dollimore must have known as early as the first time he saw the charges brought against Offender ZZ that his client was being prosecuted under his new identity rather than his birth identity. Given Mr Dollimore's role in relation to the appearance for Offender ZZ on 11 October when his client was open about his true identity both with Police and the Court and given that Mr Dollimore was aware of the letter given to the Judge discussing the involvement with the Witness Protection Programme, there can be little doubt that Mr Dollimore knew what the correct position was. He appears to have made a conscious decision for

whatever reason to allow the prosecution to proceed on an incorrect basis. This all resulted in allowing Offender ZZ to be dealt with by the Court as if he was a first offender when he appeared on 7 November 2006. Mr Dollimore's default was in allowing Offender ZZ, to be prosecuted and allowing the prosecution to continue under a name he knew to be false (in the sense that it was not Offender ZZ's birth name and did not carry with it Offender ZZ's previous convictions). Mr Dollimore must have known that if he disclosed Offender ZZ's birth name to the Court or alerted the Police prosecutor to the position this would result in disclosure of Offender ZZ's previous convictions.

Information Technology Issues

- 5.51 In early 2005 Police and Justice commenced work on creating the necessary functionality within the NIA system to enable the matching of new identities with criminal histories in such a way as to preserve the integrity of the Witness Protection Programme and not compromise the safety of individual witnesses. This process is due to be completed in August 2008.
- 5.52 As an interim measure Police have introduced a computer system for use by the Witness Protection Programme which involves notification alerts. This functionality became available on 17 May 1999 but was not used by the Witness Protection Programme until 2007. My inquiries have shown that notwithstanding that this temporary system is adequate; it is only as good as those operating it. Its effectiveness very much depends on the protocols in place for its management and use. The Notification Alert System is presently monitored by two administrative assistants. I do not believe that is appropriate. The system needs to be properly monitored by sworn Police personnel who are more likely to appreciate the significance of the information they are viewing. I intend no criticism of the particular administrative assistants presently carrying out this function. From all accounts they are very able. The issue relates to

the importance of the task and the level of accountability required by those carrying out that task.

- 5.53 There needs to be more regular checking of the notification alerts and guidelines developed setting out what should happen when information of interest is thrown up through the notification alert system.
- 5.54 When the new technology is introduced in August 2008 care needs to be taken to ensure there is a process which allows the merging of old identities with new identities once a witness has been terminated from the programme. Notwithstanding that a witness is no longer on the programme, if they are using a new identity and there is no merger of their identities within the system, it would be possible for that individual to offend under each identity without any guarantee of match-up between the two names.
- 5.55 At the time of these events NIA did not have the functionality to conduct the merger of the Offender ZZ and Offender XX identities in a way that provided sufficient security surrounding the witness's identity. The functionality to be introduced in August 2008 does provide that security. Had that functionality been in existence at the time of these events it is expected that matters would not have arisen as they did in October / November 2006. Equally, had the Notification Alert System been used Offender ZZ's offending in November may well have been signalled in a more acute way to those who needed to know. That said, it cannot be ignored that individuals did know that Offender ZZ had offended in October and was due to appear in November 2006. Those individuals simply failed to communicate important information effectively and they failed to take appropriate steps to ensure that proper assessments and responses were made when Offender ZZ was offending in July and October (and appearing in Court in October and November). In the end the failures in this case come down to individual error and inadequate systems.

5.56 As a security measure, when Police create the new identity for a protected witness they do not create a personal record number (PRN) accordingly, the management of an offender cannot be recorded in the CPPS IOMS database. I was told that this precludes compliance with certain CPPS Operations Manual and quality assurance systems requirements, namely:

- Completion of offender details IOMS screen.
- IOMS alert or case note to record offender warning system status.
- RNC case note and IOMs.
- Record of Parole Order details checked for accuracy.
- Case noting of any R1 needs in IOMS.
- A current IOMS instruction to report.

If in fact it is correct that an inability to manage an offender on the IOMS database means that these steps cannot be taken then either the functionality needs to be created to allow for management on that system or a manual system needs to be developed to address these matters. I am advised by Police that it is intended that a PRN number be created when assigning a new identity to a protected witness.

5.57 The inability of CPPS to lay a breach of parole in the Nelson District Court resulted from the fact the Offender XX identity did not exist in IOMS. An IOMS identity is a prerequisite for transmitting a charge of breach into the Court system and for creating a unique criminal record number (CRN) for such an offence. In my view the difficulties which Ms H encountered in laying a breach of parole ought not to have prevented her from having some form of direct discussion with the Court Registrar so she could explain the circumstances of Offender ZZ's case and his participation on the Witness Protection Programme (and the implications of that). If there was any uncertainty about what information could be provided to the Registrar about Offender ZZ's status the Probation Officer should have sought permission from the

Witness Protection Unit for limited disclosure to the Registrar so a paper breach could be lodged.

- 5.58 Without an IOMS entry, an updated risk of conviction or risk of imprisonment assessment could not be completed for Offender ZZ. A document referred to as Predisposing Period Criminogenic Needs Assessment ('PCN') was not completed. I understand that a key purpose of such an assessment is to increase the motivation of an offender to undertake an appropriate programme or intervention. In Offender ZZ's case this could have been an alcohol and drug intervention. Although this assessment could not have been completed in IOMS, Offender ZZ could have been taken through the PCN assessment and a PCN booklet completed, with a copy retained on his paper file. It was not. The mere fact that the assessment could not be completed in IOMS was not an excuse for the failure by CPPS to carry out such an assessment.
- 5.59 I was told that without the functionality of IOMS the ability to create a sentence plan to CPPS Operations Manual standard was limited. As an alternative the Probation Officer completed a one-page paper headed 'Sentence Plan' which focused on Offender ZZ's alcohol and drug special condition. It was noted that he would be required to attend all scheduled appointments although there was a degree of difficulty in processing the related referral given the Witness Protection Programme implications on the sharing of information with another agency. I do not accept that the fact that IOMS could not be used was an adequate excuse for any failures of CPPS to complete steps in their protocols that were necessary.
- 5.60 CPPS failed to follow the Operations Manual Sentencing Management Guidelines which require all DP2 offenders to report weekly for at least the first three months of their induction into parole while the offender is established in their sentence requirements and is complying with them. Offender ZZ was a DP2 offender by virtue of his status as a parolee (all offenders released on parole prior to 1 October 2007 were managed

under the DP2 sentence management regime). Had Offender ZZ been required to report weekly to Probation his Probation Officer would have been in a better position to identify the escalating risk that he presented.

Term of Reference 3

“The nature, timing and appropriateness of enforcement action taken against the driver while he was on parole”.

- 5.61 Perhaps the key issue for Corrections was the manner in which CPPS responded to Offender ZZ’s further offending following his convictions on 11 October and 7 November 2006 respectively.
- 5.62 While these actions (reoffending) are not technically a breach of Offender ZZ’s parole conditions, they do present a potential ground for recall to prison. Sections 60 and 61 of the Parole Act 2002 provide that “a Probation Officer may make a recall application to the New Zealand Parole Board where an offender has committed an offence punishable by imprisonment”. The emphasis on ‘may’ provides a degree of discretion for the Probation Officer. It is noted that on 1 October 2007 an amendment to the Parole Act loosened this definition of further offending by adding that a conviction is not required to establish this ground for recall. I accept that in 2006 the emphasis leaned towards a conviction.
- 5.63 Offender ZZ’s Probation Officer, Ms H, clearly considered recall action at the time of Offender ZZ’s 11 October 2006 conviction for reckless driving and failing to stop. Ms H queried the Head Office Operations Adviser who was unsure as to whether recall action was the appropriate course of action. Offender ZZ was primarily known as an offender with an extensive history of property offending, namely burglary, theft and receiving. He previously had only one set of driving convictions when he was sentenced for careless driving, disqualified driving and failing to stop on 16 December 2005, among the other mainly property offences with which he was convicted on that date. While these first convictions

for driving offences were included in the imprisonment sentence that preceded Offender ZZ's release on parole, I was advised that historically CPPS staff extended a degree of discretion where further offending, particularly for driving matters without the aggravating features of alcohol or disqualification, sits outside an offender's substantial offending history. It is possible that Offender ZZ's involvement on the Witness Protection Programme resulted in CPPS staff exercising the discretion not to take recall action at that time, for that reason. I do not accept that was a reasonable position to take in the circumstances of this matter.

5.64 Recall action was again considered in November 2006, two days after Offender ZZ was convicted under the name of Offender XX for driving with excess breath alcohol. At that time the Probation Officer Ms H queried the Head Office Operations adviser as to whether she should take recall action or breach Offender ZZ for failing to report as instructed. Ms H was advised to take breach action. Although issues of identity existed relevant CPPS staff were aware that Offender XX and Offender ZZ were one and the same person. The decision to only take breach action and not to initiate an application for recall to prison was simply unacceptable. I was advised that this may have been influenced by Offender ZZ's Witness Protection Programme status and because of a belief that there was an ongoing level of Police supervision that this status entailed. However on that occasion a second traffic conviction since Offender ZZ's release, aggravated by alcohol and his prior disqualification under another name, should have indicated that recall action was now the most appropriate enforcement action to be taken.

5.65 As I discuss elsewhere in this Report, it is clear that there needs to be extensive change in development of a detailed CPPS policy and procedure for the future management of CPPS offenders on the Witness Protection Programme. Witness Protection Programme offenders must be managed according to standard CPPS operation manual and where the absence of electronic functionality exists, adequate manual processes

must be in place. It is clear there needs to be regular liaison between CPPS and Police prior to and during an offender's placement on the Witness Protection Programme. It is essential that there is CPPS involvement in the pre-release process for prisoners on the Witness Protection Programme. It is imperative that there be managerial supervision, consultation and decision-making for CPPS staff managing Witness Protection Programme offenders at Head Office and local service centre levels. In the absence of IOMs functionality there needs to be a robust regime for case noting and recording offender management and manager checks.

- 5.66 As I indicated elsewhere in this Report, the tragic circumstances in which Ms Ashton died arose from a series of errors and systems failures that led to a situation where Offender ZZ was in a position to be at large driving a motor vehicle on 5 December 2006 when he should not have been.

Name Suppression

- 5.67 I have been asked to consider issues relating to name suppression as part of this Inquiry. Concerns have been expressed about the suppression orders made by Justice Simon France in the High Court at Nelson following Offender ZZ's conviction and sentencing on 31 May 2007 arising from the fatal collision in December 2006. Concerns have been expressed by the Ashton family and by Hon. Nick Smith MP on their behalf. In addition Offender ZZ's mother has expressed concerns that her son's birth name is not suppressed.

Suppression Order

- 5.68 When Offender ZZ appeared for sentencing in October 2006 he presented a letter to the Judge, which his Counsel, Mr Dollimore had witnessed. Offender ZZ disclosed that he was on the Witness Protection Programme. As a result, District Court Judge Zohrab ordered that his name be suppressed

- 5.69 When Offender ZZ appeared for sentencing on the excess breath alcohol charge in November 2006 he used the name Offender XX and neither he nor his Counsel made any reference to the fact that the name Offender XX was an alias for the name Offender ZZ and no reference to the fact he was on the Witness Protection Programme. Accordingly no suppression of the name Offender XX was ordered.
- 5.70 On 31 May 2007 Offender ZZ was sentenced on manslaughter and related charges arising from the fatal collision in December 2006. He also appeared on a driving whilst disqualified charge for the excess breath alcohol incident for which he had been convicted in November 2006 under the name Offender XX. Offender ZZ's Counsel, Mr Dollimore sought suppression of both the name Offender XX and the name Offender ZZ, together with details of all of the charges and the fact that Offender ZZ was on the Witness Protection Programme. The Crown opposed the suppression of the names Offender ZZ and Offender XX, but sought suppression of Offender ZZ's involvement in the Witness Protection Programme. Justice France reasoned that the name Offender XX was a clean identity and should be protected for use when Offender ZZ was released from prison. For that reason he ordered suppression of the name Offender XX and suppression of details of the charge of driving whilst disqualified. In relation to the name Offender ZZ, the Judge indicated that as Offender ZZ was returning to prison under that name, his name was already in the public arena and it was for Corrections to ensure his safety. On that basis he did not suppress the name Offender ZZ or the charges on which he was convicted under that name, including the manslaughter charge. In relation to the fact of Offender ZZ's participation on the Witness Protection Programme, Justice France concurred with the Crown and ordered suppression of all reference to the Programme.
- 5.71 By Minute dated 18 June 2007 Justice France clarified the position in relation to name suppression following media requests. He noted that no suppression applies in respect of the fact that Offender ZZ was

sentenced on 31 May 2007 in relation to several driving offences, the most serious of which was manslaughter. Further, the other matter concerning Offender ZZ where he was charged under the name Offender XX and all details relating to that matter and linking the name Offender XX to Offender ZZ are suppressed. The fact that Offender ZZ was on the Witness Protection Programme at the relevant times is also suppressed. I note that despite this aspect of the suppression order there has been publication of this fact in national media more recently. I record that any breach of a Court suppression order is a most serious matter for which there are potentially serious consequences for the person who has committed the breach.

- 5.72 Police told me they consider that as a general rule the birth name should be suppressed because disclosure of that name could create a safety risk for the witness.
- 5.73 I have had discussions with Hon. Nick Smith MP, and personnel at Police National Headquarters to ascertain the current Police position regarding name suppression. As a result of requests from the Ashton family and Hon. Dr Smith MP, Police through the Tasman Crown Solicitor sought a modification to the suppression orders made in May 2006. The modifications were sought to enable all details in respect of the December 2006 fatal collision to be publicised including the charges, but not the name Offender XX or any details of his involvement on the Witness Protection Programme. The modifications sought by the Crown were opposed by Counsel for Offender ZZ's family. A telephone conference took place on 4 December 2007 between Counsel and the Judge and modifications made to the orders as sought by the Crown.
- 5.74 Police have emphasized that it is important that reference to Offender ZZ's participation in the Witness Protection Programme ought to remain suppressed on a permanent basis (regardless of his termination from the Programme) if the integrity of the Programme is to be maintained. I accept that.

Discussion

- 5.75 I note that in the normal course Police would not support name suppression for an offender convicted and sentenced for the types of offences Offender ZZ was sentenced for on 31 May 2006. In this case however, complications arose because of the fact of Offender ZZ's participation in the Witness Protection Programme and because of his concerns about security.
- 5.76 In the end it would seem as a matter of principle that in a case such as this involving a protected witness, when considering the position to be taken in respect of that person's application for suppression, Police should start from the position that there ought to be suppression of the protected witness's birth name (in the interests of safety for the individual) and the fact the offender is or was on the Witness Protection Programme. However, I accept that the circumstances will always vary and that general position will always depend on the circumstances of any given case. For example, in circumstances where the offender himself takes any action in the public arena then that may alter the position and I envisage the need would then arise for liaison between the prosecutor and relevant Witness Protection Programme personnel as to the position to be taken.
- 5.77 For obvious reasons involving the ongoing need for safety for the individual, termination of a protected witness from the Witness Protection Programme generally ought to have no bearing on the issue of suppression.

Consultation under Victims Rights Act 2002

5.78 There is a legal obligation on prosecutors specified in section 28 of the Victims Rights Act 2002 that the prosecutor must make all reasonable endeavours to ensure that any views the victim (or his or her family) has on an application for permanent name suppression are ascertained and must inform the Court (orally or in writing) of any such views.

5.79 For this obligation to be given effect, there must be liaison between Police and / or the prosecutor with the victims and their families, their views canvassed and ascertained and then conveyed to the Court. In this case it would appear there was no formal consultation with the family of Ms Ashton in respect of suppression as contemplated by the Victims Rights Act 2002. However, I am satisfied on the information before me that Detective Sergeant C did have some discussion with the Ashton family and / or canvassed their general views on this issue. I accept he did not do so in a formal manner and that the family's views were not communicated directly to the Court. However, I make no criticism of Detective Sergeant C in this regard. In this case there were so many issues for consideration by him by that stage and any failure on his part to carry out a formal consultation with Ms Ashton's family was not, in my view, in any way intentional. The fact is that he did have an understanding of the family's views on the issue of suppression and that is recorded on the Police file (letter from Detective Sergeant C to his OC CIB Nelson, 17 May 2007).

6 RECOMMENDATIONS

POLICE

- 6.1 Police should immediately review, update and reissue the Witness Protection Policy and Guidelines.
- 6.2 The Witness Protection Unit should urgently review its protocols in relation to management / monitoring and supervision of a protected witness. Including:
- The frequency of monitoring of a protected witness should be increased.
 - A requirement that all contacts between the protected witness and the Witness Protection Unit must be fully documented as must all relevant communication with other agencies concerning the Witness.
 - In the event contact with a protected witness is not able to be maintained, the handler's immediate supervisor is to be informed as is the Unit Manager.
 - The requirements for completion of risk assessments.
 - The lines of communication between the Witness Protection Unit and the Host District.
 - The lines of communication between the Witness Protection Unit and other agencies involved in management or monitoring of a Protected Witness.
 - The steps that must be followed in the event a protected witness is apprehended by Police and or charged.
- 6.3 If a Protected Witness is on parole regular contact must occur between the Police Handler and the Witness's Probation Officer with a view to sharing relevant information

- 6.4 Police in (consultation with CPPS and other relevant agencies) should review existing practices and draft protocols specifying the lines of communication between their respective agencies and district offices dealing with the management / monitoring of a protected witness. Any protocols should ensure a direct line of communication between those responsible for day to day management and monitoring of a protected witness.
- 6.5 Police should review the need for the position of National Coordinator at Police National Headquarters with a view to restructuring the line of command / management of the Witness Protection Programme.
- 6.6 Any restructuring of the Witness Protection Programme should involve a change so the Unit operates from one dedicated office. This would clarify the chain of command and enhance the flow of communication among those responsible for monitoring a protected witness.
- 6.7 Police should clarify and, as appropriate, expand / enhance the role of the District Police Liaison Officer in the Host District with a view to that Officer providing some level of monitoring of a protected witness and regular liaison with the Witness Protection Unit. In the event that the protected witness is on parole the Liaison Officer should be directed to liaise with the Probation Officer at regular intervals.
- 6.8 The Officer in Charge of the CIB and the Police Liaison Officer in the Host District should be fully briefed on the location of a protected witness. He / she should be provided with all relevant details concerning that witness including their birth name and new identity as well as clear instructions on who in the Witness Protection Unit he / she should liaise with regarding the witness.
- 6.9 The District Commander in the Host District should be given at least an oral briefing concerning the location of the protected witness in his / her District.

- 6.10 Police should identify the factors that should require a risk assessment in relation to a Protected Witness. In my view such an assessment is necessary when there has been offending, arrest or other non-compliance by a Protected Witness. Factors requiring formal risk assessment of a witness should be documented and made available to all relevant Witness Protection Unit personnel.
- 6.11 Any risk assessments and plans for monitoring of a protected witness should be recorded and subject to regular review by supervisors.
- 6.12 All Protected Witnesses should be directed to contact their handler immediately if apprehended by Police.
- 6.13 As a general rule (and pending introduction of reliable computer functionality assuring the matching of new and birth identities and criminal histories), a protected witness who is charged with any offence must be charged under his or her birth name. Issues about secrecy or protection of the witness should be dealt with by way of appropriate suppression orders and if necessary application for closed Court sessions.
- 6.14 In the event a protected witness acts in breach of his / her agreement with the Witness Protection Programme immediate consideration should be given to the need for removal of the witness from the programme. This process must be fully documented.
- 6.15 If a protected witness is apprehended by police and / or charged with an offence the Witness Protection Unit should immediately contact the Officer in Charge of the CIB in the relevant Host District to ensure he is aware of the identity of the witness. The OC CIB should be provided with guidelines as to how to manage that information.

- 6.16 Police need to review and clarify their policy concerning name suppression having regard to my findings. Victims or families of victims should be consulted in terms of the Victims Rights Act 2002.
- 6.17 New identities should, as a general rule, be assigned to a protected witness before release from prison or immediately on release.
- 6.18 As a general rule a protected witness should not be excused from compliance with his or her parole conditions. If for any reason that does become necessary the Parole Board should be advised.
- 6.19 If possible the Police Liaison Officer should attend Court when a protected witness appears and immediately provide a report to the Witness Protection Unit on the circumstances of the appearance.
- 6.20 Police should progress the initiative already under way concerning Police attendance at Parole Board hearings in respect of protected witnesses.
- 6.21 There should be full documentation setting out the reasons for withdrawal of any charge laid against a protected witness.

CPPS

- 6.22 CPPS should immediately review, update and reissue the policies and guidelines concerning their management of a protected witness and the lines of supervision of those responsible for such management.
- 6.23 The following matters must be included in any policy documents setting out the protocols for management of a protected witness:
- a clear statement of the lines of communication within CPPS (Head Office and District) and between CPPS and Police and

other interested agencies responsible for management should be communicated to all relevant staff.

- the roles and responsibilities of the probation officer managing a protected witness and those providing supervision of that officer.
- detailed instructions on levels of monitoring.
- the steps to be followed if a protected witness is not compliant with parole conditions.
- the process to be followed in relation to breach or recall action.

6.24 The lines of reporting and supervision should be clarified so that the Probation Officer responsible for managing the protected witness is supervised by his or her line manager who in turn reports to Head Office.

6.25 In addition to direct line supervision the Probation Officer should be required to communicate directly with the Witness Protection Unit (specifically the handler responsible for the monitoring of the protected witness).

6.26 As a general rule the CPPS should not agree to any suspension of the conditions set by the Parole Board in relation to a protected witness. If this becomes necessary the Parole Board should be notified and there should be documentation of these matters.

6.27 CPPS should identify the factors that require risk assessments to be undertaken in relation to a protected witness under their supervision. All risk assessments and plans for management of a protected witness should be subject to regular review by supervisors.

6.28 CPPS should review their practices concerning file management of a protected witness supervised on parole. In particular copies of a protected witness's parole licence, sentencing notes and conviction history held on the CPPS files by the Probation Officer managing the

parolee and the Operations Adviser responsible for oversight should have relevant identities consistently included.

- 6.29 All contact with a protected witness and communications concerning and decisions taken regarding such a witness should be appropriately documented.
- 6.30 CPPS should review their practice and if necessary develop protocols setting out the circumstances when an application for Recall as opposed to Breach action should be taken in relation to a protected witness.
- 6.31 This review should have regard to my recommendation that there should be near zero tolerance for any offending by a protected witness.
- 6.32 If possible the Probation Officer responsible for managing the Witness should attend Court when a protected witness appears and provide a report to their supervisor on the circumstances of the appearance.
- 6.33 A Parole Licence for a protected Witness should be completed in either the birth name or the new identity. Use of the prison name leads to confusion.

INFORMATION TECHNOLOGY

- 6.34 Relevant Government agencies should develop an across-Justice sector IT strategy focusing on issues of a technical nature that have been identified as a result of this Inquiry.
- 6.35 Priority must be given to the completion of the work necessary for the introduction of the Management Module programme allowing the linking of offender identities and criminal histories in a secure manner. Further work should also be undertaken to ensure IT functionality that will capture of all relevant data ie LTNZ histories and Police alert information (eg firearms / domestic violence / suicide risk).

- 6.36 As there is no automatic merger of birth and new identities for a protected witness once terminated (unless they have been involved in criminal offending such as to result in termination from the Programme), Police should ensure all such witnesses are monitored by the Programme indefinitely (or until their identities are merged).
- 6.37 Police need to review the use of the Notification Alert system presently in use with a view to monitoring the system by at least two suitably qualified sworn police personnel at regular intervals (more than twice weekly) who would report information of interest to NCOs and make weekly reports of information to the Witness Protection manager.
- 6.38 Guidelines should be developed identifying the protocols to apply for the management of the Alert Notification System. (Methodology)
- 6.39 Police should ensure that a PRN number is assigned for any new protected witness identity created so that the witness can be managed on the IOMS database, alternatively a manual system needs to be developed to address that matter.

GENERAL

- 6.40 The New Zealand Law Society Ethics Committee should be invited to consider the relationship between Rule 10.07 and Rule 8.01 of the Rules of Professional Conduct for Barristers and Solicitors.

INSERT:

Rule 10.07

“Defence counsel must not disclose a client’s previous convictions without the client’s authority.”

Commentary: (1) Should the Court raise the question of previous convictions with counsel, counsel should inform the Court that it is not entitled to ask such a question and that counsel will not answer the question.”

Rule 8.01

“In the interests of the administration of justice, the over-riding duty of a practitioner acting in litigation is to the Court or the Tribunal concerned. Subject to this, the practitioner has a duty to act in the best interests of the client.

Commentary: (1) a practitioner must never deceive or mislead the Court or the Tribunal ...

(3) a practitioner whilst acting in accordance with these duties, must fearlessly uphold the client’s interests, without regard for personal interests or concerns”

- 6.41 Police, CPPS and Justice should consult and develop a communications strategy in relation to their joint involvement with and management and monitoring of a protected witness.
- 6.42 Protected witnesses, like all offenders, should be managed by Police and CPPS in line with appropriate Operations Manuals, Policies and Guidelines and not treated differently because of their status.
- 6.43 The necessary policy work should be undertaken in relation to the possible drafting of legislation dealing with witness protection along similar lines to the South Australian Witness Protection legislation.

7. CONCLUSION

- 7.1 As I have noted above, the tragic circumstances in which Ms Debbie Ashton died arose from a series of individual performance errors and system failures that contributed to the situation which led to Offender ZZ being at large driving a motor vehicle on 5 December 2006 when he should not have been.
- 7.2 In relation to the management of Offender ZZ as a parolee by the Department of Corrections and as a protected witness by the New Zealand Police I have found that there were significant failures in compliance with existing standards and procedures, inadequate or out-of-date protocols and guidelines, poor supervision or line management and inadequate communication of instructions to staff. It needs to be acknowledged that a number of steps have already been taken by both the Department of Corrections and the New Zealand Police to introduce steps and procedures to address many of the issues that have been highlighted by this tragedy. However, as I have stated above there are further steps that should be addressed as a matter of priority.
- 7.3 Corrections and Police staff whose performance has come under scrutiny have been open and acknowledged errors they have made. Without exception all of them have expressed extreme regret if any act or omission on their part contributed to these events.
- 7.4 I have made a number of findings and recommendations but in the end I consider that one fundamental issue underlies the problems that arose in this matter. There was a failure by both Police and Corrections to appreciate fully the risk that Offender ZZ presented as a protected witness and to ensure that proper steps were in place to manage him adequately. To some extent police and Corrections were “captured” by the covert nature of the Witness Protection Programme and the need for secrecy. If Police wish to run a Witness Protection Programme providing new identities for individuals who have significant criminal

backgrounds, it follows that they must accept that those individuals pose a potential serious risk to public safety. The level of monitoring and supervision of a protected witness who presents such potential risk must be at the highest end and the processes in place for monitoring of such a witness and for the supervision and management of those responsible for that monitoring must be rigorous. If the information technology is not available sufficient to provide assurance that a protected witness's true identity and past criminal offending will be matched with their new identity, then it falls to Police and others to develop processes that ensure that such a witness cannot offend and present to a Court as a new offender when he or she is not.