

POLICE

v

TEINAKORE BISHOP

Date: 25 August 2016

Counsel: Messrs Nick Williams and Michael Thomas for the Commissioner of Police
Messrs Rodney Harrison QC and Brian Mason for Defendant

SENTENCING NOTES OF DOHERTY J

[1] Teina Bishop, between December 2010 and January 2014, you were the Minister of Marine Resources and various government Ministries of this land. One of the functions of such a minister was the issuing of licences for commercial purposes of fishing within the Cook Islands waters and beyond. Companies associated with the Luen Thai Fishing Venture Limited, which is one of the largest fishing and seafood companies in the Asia-Pacific region, were granted licences by you. You issued 18 licences between 14 October 2011 and 24 April 2013.

[2] Luen Thai became closely connected with the government of the Cook Islands in 2011 when the two entered into a Memorandum of Understanding on fishing cooperation. You were involved in your capacity as Minister.

[3] You also became closely connected personally with the Chief Operating Officer of Luen Thai, a man by the name of Mr Chou. Over time, you regularly corresponded and spoke with Mr Chou using skype-messaging and skype-voice contact, and an analysis of the messages which formed part of the Crown case give an insight that your relationship was not just confined to government business under the Memorandum of Understanding. It appeared,

to me at least, to be unusual that a minister of the Crown would be personally negotiating licensing matters with a senior official of the licence holder, let alone conducting personal business with him. To some extent I am told by referees, matters I will refer to later, who have given me advice on you that to some extent that is part of the way you are and part of your personality.

[4] In June 2012 you became interested in the purchase of the Samade Resort which was an accommodation establishment in Aitutaki where you live. It was experiencing financial difficulties and Westpac, its bankers, were effectively forcing a sale. A New Zealand couple had signed up but they required the approval of the Cook Islands Business Trade and Investment Board (“BTIB”) and under the appropriate government regimes, preferences are given to indigenous Cook Islanders over foreigners. You knew that. You already had extensive business interests in Aitutaki including a lagoon tour business and the Samade Resort would complement that and others of your businesses.

[5] You showed interest in the purchase and you attempted to raise finance and persuade the BTIB that you should be the preferential buyer. Put bluntly, you had difficulty raising the finance and as time was running out to clinch the deal you directly approached Mr Chou for a loan of USD\$500,000 through Luen Thai’s Cook Islands company – that was in January 2013. You brought in another businessman, Mr Koteka. You negotiated with the banks and in particular Westpac who was forcing the sale. But also the ANZ was approached for finance. The banks required a contribution of equity. Neither you nor Mr Koteka had that equity. You had already tried a number of avenues including business acquaintances, friends and family to put money into the venture. None of them was able or willing to do so.

[6] Over the next few months from January the negotiations continued culminating an offer of finance from Westpac Bank. That included the need for \$300,000 Cook Islands dollars equity to be injected. This was early in April 2013.

[7] You continued negotiations with Luen Thai and those included lawyer-to-lawyer negotiations. They were generally couched in terms that regardless of the structure of the loan, the advance was to enable you to complete the purchase, and this was contested at your trial. Indicative, in my view, is an exchange of emails between you and Mr Chou on 25 April

2013. It was he who was personally involved in trying to make the deal work, and I want to read that. Mr Chou said to you:

“I still have a conference call meeting with my board and our lawyer. They are very worry [sic] about opposition can cause this incident to attack you and Huanan” – which is their company – “in the future. I’ll try my best to convince them and will advise the outcome later.”

You immediately replied:

“That is why the loan is for Thomas” – Thomas was Thomas Koteka – “even though it is the strength of our business that will secure and pay for it. It is also why we only want now \$300,000 instead of half a million. We have already spread the word that the bank is giving us 60 percent of the funding and Ann and I through our savings is putting up \$100,000 cash and Thomas is to put in \$100,000. That is the deal that our bank Westpac came to us after they learned that ANZ was willing to give us \$500,000 for the purchase. The two banks are fighting for our business but Westpac is who we will go with and also because Huanan is there and hopefully we can deal with the finance in-house with them.”

[8] You may not have been straight with Mr Chou either in that exchange, as what you told him about the bank funding bore no relationship at all to what Westpac had offered and that was a matter confirmed in his evidence by your lawyer in the trial.

[9] In any event, the next day Mr Chou confirmed the advance would be made and on the same day you clinched the deal and got the approval of the BTIB.

[10] On 10 May 2013, the finance arm of Luen Thai, a company called Century Finance, advanced USD\$256,745 to you. NZD\$250,000 (or Cook Islands dollars) of that was ultimately used to complete the purchase of Samade.

[11] The Crown case that was put before the jury was that you accepted or obtained a bribe from the financing arm as a reward for having issued the 18 fishing licenses to Luen Thai interests. The Crown alleged that the bribe was in the form of the loan which enabled Aitutaki Villages Limited, a company set up with your family interests as a shareholder and Mr Koteka as a shareholder, to complete the Samade purchase.

[12] Further, the Crown alleged that you knew or believed that the loan advance was received in connection with your official acts of granting the 18 fishing licences and that therefore you had acted corruptly.

[13] The jury agreed and returned a guilty verdict on 20 August 2016 after a trial which had lasted some 13 sitting days in this Court.

[14] You are now for sentence.

[15] In my view, the jury's verdict means it accepted that you obtained a benefit from the bribe in that obtaining it enabled you to buy Samade Resort. The bribe was by way of a loan to Mr Koteka in the technical sense but the predominance of the negotiations all referred to an advance to you or your interests; as late as five days before the advance was made.

[16] I find it inconceivable that Luen Thai would have advanced the monies to Mr Koteka, a person not known to them. They had no connection with him, bar through you. Mr Chou had difficulty getting his board to agree, particularly as there was the risk of political fallout and that is evidenced in the extract I have just read and it is a reasonable inference that the fact it was you behind the venture, as you yourself had said, was the important thing to the Chinese. You agreed to personally guarantee the advance.

[17] There has been some criticism that the Crown has not quantified the benefit of being able to complete the Samade Resort purchase. But at the very least it is a reasonable inference to draw that there was a positive benefit on your Aitutaki enterprises. I note that the Westpac Banking cash flow analysis and the working papers that were assessed to give you the loan, showed that your companies and the particular enterprise that Samade would represent, showed a healthy net profit before interest and tax. They can only have got that from you. Your own presentation to the BTIB forecasted net profits of \$58,000 in Year 2 rising to \$125,000 in Year 5. Now that does not mean that that is what the deal was worth at the time, but it seems to me that a calculation can be made and in any event the benefit was not insubstantial.

[18] I do not unreservedly accept your submission through counsel that the purchase was to help the inhabitants of Aitutaki. That may have been a consequence but, in my view, and

on the evidence that I heard and accept, that was not a prime motivator. It was not mentioned in your presentation to the BTIB. And the only reference in the Westpac Bank's analysis was that you would retain the then current small number of staff working at Samade. To me, all the indicators lean towards self-interest rather than altruism.

[19] The fact that the bribe needs to be repaid is in my mind irrelevant. If you did not get it, you would not have been able to buy Samade.

[20] You come before the Court with no previous convictions. I have had the benefit of a Probation report. It tells me you are 57 years of age. And if I can generally summarise the positive tenor of that report, it tells me you are a man of humble origins, you have achieved education and success, you are a god-fearing Christian man, you are much loved and adored by your family, you are a good provider to your family, you are a businessman with altruistic aims for the people of the Cook Islands and Aitutaki in particular, you have been a politician and minister on and off for seventeen years. Specifically you are a business achiever. You are a benefactor, both personally and through your companies who have donated much by way of time effort and real cash to local organisations. I note that in the last year alone there are receipts from such organisations which total about \$35,000. You are a family person. You have provided well for your children with expensive overseas private education. Your own estimate is that that has cost you one million dollars. Your children adore and rely on you even in their adult state.

[21] The Probation report says you expressed remorse and counsel has said that you express remorse and regret through him today.

[22] It has not been explained to me how that remorse has been manifested. It is very easy to say one is remorseful; but where is the evidence of it? There has not been an apology from you to your community or to your government and within days of the verdict you gave an interview to the local press. Now, you reported as saying that you had done no wrong. To me, there is nothing you had done or has been put before me that shows me you are remorseful at all. I am sure that you are regretful for what has happened to you but I cannot see any remorse in the true sense that would weigh as a mitigating factor in sentencing. And significantly your counsel does not ask me to do that.

[23] The Probation report recommends a non-custodial sentence by way of supervision.

[24] Much has been made of the purposes of sentencing in cases like this and predominantly the discussion has been about deterrence. But accountability, the sheeting home of responsibility to you as a perpetrator of this crime, denunciation of your conduct as well as deterrence are the primary purposes of sentencing in these cases. And in any democratic society where the rule of law prevails and where those in positions of public responsibility have transgressed, the Courts have been unequivocal in their condemnation.

[25] Counsel have provided me with a number of decisions of various courts, not only in this country but elsewhere and many of them talk about this concept. In New Zealand there is the case of the *R v Field* [2012] 3 NZLR 1 where it was said corrupt actions have a tendency to promote corruption in others and bribery and corruption threaten institutions such as Parliament that are the foundation of democracy. In Australia, in a New South Wales case, the *R v Jackson & Hakim (1988) 33 A Crim R 413*, it was said that a Cabinet Minister is under an onerous responsibility to hold his office and discharge his function without fear or favour to anyone, otherwise the very institution of democracy itself is assailed. Further the Court said:

“It is particularly important that those who have the privilege, the honour and the responsibility of cabinet rank should not for their personal advantage, abuse their position”.

[26] And really it is a matter of public trust. Can the public, should the public, are they entitled to have trust and confidence in these institutions and those that attain positions of power within them?

[27] The sentencing judge in the *Field* case said:

“The public should be able to have complete trust and confidence in the integrity and proper function of these institutions. Any actions which tend to undermine them - particularly when they are perpetrated by those whose duty is to uphold them - are deserving of particular condemnation”.

[28] In this country, in the Cook Islands, the public expectations are already enshrined in those documents that set out the rules for Members of Parliament and Cabinet Ministers. The Standing Orders say that it is the personal responsibility of every Member of Parliament to maintain the highest standards of ethical behaviour and to protect and maintain the integrity

of Parliament. It says ministers should not, under any circumstances, undertake any decision or exert influence in any form whatsoever in respect of which a minister will derive personal gain or benefit. The Manual of Cabinet Procedures says that ministers must perform the duties of their office impartially and shall not be influenced by fear favour or self-interest. They must disclose any conflict of interest. They must not solicit or accept any benefit for themselves, their families or any business in which they have an interest from persons and special relationships with the government.

[29] And it is for all of these reasons that the Courts have said, as was said by the New South Wales Court of Criminal Appeal in a case called *Retsos v R* [2006] NSWCCA 85:

“any offence of, or ancillary to, corrupt conduct on the part of any public official should be denounced plainly and punished condignly”.

“Condign” means “severe and well deserved”.

[30] And in all of the cases that I have referred to, and others, sentences of imprisonment have been imposed. In *Field* it was 5 years starting point for bribery and corruption on eleven counts where there was NZD\$58,000 worth of work done for a member of parliament.

[31] In the *Jackson & Hakim* case, a minister accepted a bribe of \$20,000 and got 10 years imprisonment.

[32] In other cases which have been referred to me by particularly the Crown like *R v Nua* [2001] 3 NZLR 483, a New Zealand customs officer was convicted on one corruption and 30 counts of using a document where nearly NZD\$200,000 was involved and a 5 year starting point was justified.

[33] In Canada, a case called *R v Bruneau* (1963) Carswell Ont 22, a Canadian MP who corruptly accepted a bribe of CAND\$10,000 as a member of parliament was sentenced to 5 years imprisonment.

[34] In the Vanuatu case of *The Public Prosecutor v Kalosil & Ors* 22 October 2015, Criminal Case no. 73 of 2015, the Supreme Court recently reviewed all of the corruption

cases from Vanuatu, from Singapore, Papua New Guinea, Fiji, Hong Kong, and referred to cases from United Kingdom and Australia and said this:

“there is a settled sentencing practice for corruption and bribery offences of this nature and ordinarily the Courts will impose a custodial sentence as deterrence.”

[35] The consensus in all of the cases was noted as this;

“this is an area of sentencing where the Court should unremittingly adopt a firm no-nonsense approach.”

[36] In the Cook Islands the Courts have also confronted corruption cases and commented on them. And those comments by and large are in complete step with the rest.

[37] In particular there is the case of *Police v Pare* [2005] CKHC 454-459. That was a 2005 sentencing where a minister had been charged with three charges of using a document, which bore a 5 year sentence of imprisonment as a maximum. He was found guilty after a defended hearing. It was not a corruption charge like this one is but was characterised by the Court as “official corruption”. Mr Pare had used CID\$470 worth of goods which were public goods for his own benefit. And in that case the Chief Justice imposing sentence said this:

“This Court must enforce the law and the law is founded on the assumption that corruption is a deadly and insidious evil which strikes at the heart of any democratic society. The duty of the Court is to take a very strong stand against it when sentencing offenders and it usually justifies a strong element of deterrence in sentencing.”

[38] In that case the Court did find special circumstances to fall short of imprisoning Mr Pare. The Crown appealed the decision as being too lenient and the matter came before the Court of Appeal shortly thereafter. And the Court said this:

“In our view, the sentence under review was lenient and might not have been one which some individual members of the Court might have imposed had they been sentencing the appellant at first instance.”

It went on to say, after assessment:

“We do not consider that the sentence of the Chief Justice was merciful to the appellant was so inadequate as to justify intervention by this Court. Since a community based sentence was fairly pointless for a man in the appellant’s

situation, imprisonment was the only feasible option to that which was taken. The Chief Justice in the exercise of his sentencing discretion was entitled to pull back from the option of imprisonment in the particular circumstances of this offending and this offender, given the inexorable consequence of the appellant of a conviction.”

But what the Court then did was highlight the serious nature of public corruption and said as a final sentence,

“We emphasise that this is an exceptional case and that those who misuse public money should expect a serious penalty.”

[39] I have referred to these cases, and all of them, not necessarily as cases on all fours with yours, as to level of culpability which I will come to later, but as a guiding example of the principal that ordinarily courts will impose a custodial sentence for corruption.

[40] Your counsel referred me to other Cook Islands cases where leniency was given, and in particular *Police v Henry* [1979] CKHC 3 and also *Drollet v Police* [2004] CKCA 7. Those were also public corruption cases in the popular sense but they were not bribery and corruption cases under this specific section.

[41] I do not take what the Court said and did in those cases as meaning that the leniency should be, and is, a Cook Islands sentencing policy. All cases depend on their own facts and circumstances.

[42] I have had the benefit of detailed, careful, good submissions in relation to this exercise that I have to do today, from your counsel and from the Crown. And your counsels’ submissions highlight, firstly, that the bribe was at the low end of any scale. That is, it is a very low level benefit.

[43] Second, that this is not a corrupt bargain case. This is not something that you did wrong in exchange for money. And the Crown did not suggest that.

[44] Third, this is a reward case or put another way, it puts it in a different and lower level of culpability.

[45] Fourth, there was no detriment to public administration. That is true in the sense that the integrity of the commercial fishing licence regime of this country was not in jeopardy and was not affected. The Crown did not suggest that it was.

[46] Fifth, that there was no self-interest and that you had full altruistic motives. Well, I have already dealt with that.

[47] Sixth, that you are good and decent man who has given much to your community in both the private and public sense.

[48] Seven, that your fall from grace will be a significant factor. There is the stigma of the conviction and the fact that you were a minister of this country. The fact that you lose your parliamentary seat as a result of the conviction is something that is significant. You also now have an inability to stand for election within the next five years.

[49] Next, counsel said that you were remorseful and I have already dealt with that.

[50] He also raised the issue of your health and in particular your mental health and the effects any incarceration may have on that. You were diagnosed with a bipolar disorder in 2010. You have used medication. I am not certain whether you still are but you have been stable and are described as being in full remission. Information I have had from your medical people tell me that you are aware of early warning symptoms and have been able to intervene early and prevent any relapse.

[51] An Auckland psychiatrist has told me that imprisonment may have a detrimental effect on your mental state and he said this:

“It will likely precipitate a relapse requiring medical intervention.”

[52] Now this is predictive, but speculative. That is an opinion given really without any evidence that I think that I can take any note of. It is his opinion. But I take into account that you have been a highly functioning public figure with no doubt your trials and tribulations and share of pressure and disappointment in that process. And there is no evidence of your being unable to cope in that environment. You are aware and you can identify your problems

and should you be sentenced to imprisonment, any prison authority can be made aware of that situation.

[53] Counsel has also made forceful submissions on the effects that any sentence of imprisonment will have on your business interests and your family. And it is something that has been highlighted in many references that I have had from business people acquainted with you. But I do not think for a moment that there will be business failure if you are not there. There is ample evidence of the business acumen of your wife. You have promoted that. In the Westpac business analysis that I referred to earlier, there are notations such as “Teina and Annie Bishop are locals to Aitutaki and have vast experience in the marine tour market as well as strong Aitutaki connections”; “Annie has experience in finance and will look after the accounting side of the business”; and also “Teina and Annie Bishop have owned and operated their business for over ten years with knowledge of the Aitutaki tourism market. Annie also has experience in managing business account information”. Also it was noted that Mr Koteka “has vast knowledge in the area and he is running the Aitutaki Villages Limited”.

[54] The Westpac cash flow analysis showed a healthy profit before interest and tax for your businesses. The ANZ did not get into the picture ultimately, but its business analysis also notes “Annie currently manages all the businesses that fall in the Bishop group”. So it is also significant that you have a stable and well run business.

[55] The profit and loss accounts for Bishop Cruises and your company T&M Limited show that the profit returns were healthy on your investment. You provided profit and loss accounts to the BTIB showing that your companies are in good heart.

[56] I have also taken into account in this aspect the glowing references that I have had from your business acquaintances. All of whom tell me that you are an exceptional businessman and that you have given much to them and to others. And I do not really expect that with the support network that you have got that they would stand by if your wife and family needed any help.

[57] There is also the play made of the fact that you took legal advice in this transaction and I have been addressed by counsel on both sides today. That too needs to be assessed in

context. In my view, this was legal advice and, as the evidence showed, given in answer to a query raised by you when the ANZ Bank indicated it would be reluctant to lend if there was a loan from the Chinese fishing interests. They indicated that that might raise a conflict of interest.

[58] The evidence, and I refer to my notes, from Mr Manarangi was that you were walking in the street and you asked him whether he thought that you were breaking the law. He said he told you that given the loan would be to Mr Koteka on commercial terms, he could not see anything illegal in that, and that was pretty much the end of the discussion. It was characterised by Mr Manarangi as being “not that important”. But in taking this submission into account, I need to remember that the evidence of Mr Manarangi was that he had no knowledge firstly of your relationship with Mr Chou and the details of your dealings and therefore he would not have known of such things as the Bounty transaction where you helped out Mr Chou to get another fishing licence. He would not have known of the exchanges between you such as this one in June 2012, and this is Mr Chou to you, this is in the skype-messaging conversations that you regularly had:

“Bishop, there are two issues I really need your help. 1. There are two health certificate that will need your government to issue but until now we still can't get it and shipment already arrived VN without HC. Then, two reefers won't be able to clear customs. 2. We have applied for four license but until now we don't receive any response from MMR - which would have been your ministry – I just afraid I will lost this license to other operators, can you assist on this as four vessels are ready to sail for long time already. Many thanks for your assistance on the two issues. I owe you on this.”

[59] But from the evidence, Mr Manarangi did not specifically know that at the time you had been speaking to Mr Chou about a loan to you and your interests.

[60] I do not think you can hide behind the ‘I took advice on this aspect and was told I wasn't transgressing’. You had the wit to ask the question, but Mr Manarangi was not given the full story.

[61] Finally, there was a submission today from counsel and in his written submissions, that there is no need for an application of general deterrence in the Cook Islands because this is the first case ever to come before the Courts. Well, it is the first case under this section of

the Act but public corruption in the wider sense has been an issue and I have referred, as he did, to the cases of *Henry*, *Drollet* and *Pare*.

[62] General deterrence is recognised by the Courts to be as much a prophylactic as a response to particular offending. It is a future indicator to those who may be minded to act in similar ways, that they will be generally dealt with in a particular way; and in these cases with condign sentences as a starting point.

[63] The Court has received something approaching seventy references from various people all in support of you. They come from Ariki. They come from Aitutaki community members, religious leaders, political associates, political opposition, civil service colleagues, business colleagues and friends. And I have read them all, probably four times, and I kept thinking as I read there are some common denominators here, and words like this were used; decent, caring, helpful, a listener, a sharer, an orator, generous, tenacious, accomplished musician and singer, leader, compassionate, entrepreneur, humble, loyal, religious, charismatic, role model, honest, strong values, hard worker, respected, diligent, trustworthy, perfectionist, capable, reliable, unselfish. And without exception they laud your attributes as a politician, a businessman, a leader of people and a supporter of your family and constituents.

[64] To many you appear to be viewed as a saint in all things. That is how strongly they support you. One of them said that you are one of the finest leaders that this country has ever produced. Perhaps surprisingly, given the verdict of the jury, most described you as a man of integrity and honesty and most do not believe that you are guilty of any crime and that is their opinion and Mr Harrison your behalf made very proper and careful submissions that you are not promoting that and I do not take it that you are.

[65] In the face of that, I cannot ignore that until now you have done much for your community and for those who are in it.

[66] The Crown argues that your abuse of trust is a separate aggravating feature of your offending. I do not accept that. The elements of abuse of trust is inherent in the charge and is recognised in the maximum sentence that your parliament has thought fit to provide for this offending.

[67] If you are a public official or an MP the inherent abuse of trust is recognised by as possibly deserving up to 7 years imprisonment. In the case of a minister the extra loss of confidence in the office of the minister and in public institutions generally is recognised by the doubling of the maximum sentence to 14 years imprisonment. That is, there is an increased expectation of the public of the trust that they should be able to have in their Ministers of the Crown.

[68] The Crown also argues that there was a premeditation that aggravated your offending in that you acted in a deliberate and planned manner. Well, to an extent that you did, but in my view, not to any extent so as to mean that your culpability has increased. I do not think you cultivated your friendship with Mr Chou for the purpose of taking advantage of him or his companies at some time in the future. I do not think that for a moment, I tend to characterise your offending in a similar manner as one of your referees when he wrote that you were “trapped by enormous temptation to do what you did”.

[69] One of the principles of the tasks of any sentencing Court is that the highest sentence is reserved for the worst cases. And so I must assess your offending within that principle and much of the argument that I have heard from counsel relates to this.

[70] I do not accept your counsel’s submission that yours is a unique case. It is just another case that has to be placed somewhere on the continuum of seriousness of offending of this nature. Nor do I accept, if I am asked to believe it, that your circumstances place you in some unique position. Unfortunately, many intelligent high achieving people have fallen from grace in the past. But this is not the worst case or anything like a worst case. As the Crown acknowledged, this is not a case of your granting commercial fishing licenses or like favours for millions of dollars over a long period. This is a case on my assessment where you as a talented intelligent individual, a leader of people, succumbed to the temptation to get something for yourself that meant you acted corruptly, and contrary to the rightful expectations of the Cook Islands people when you served as their Minister of Marine Resources.

[71] Succumbing to such a temptation is still regarded though as serious. Firstly, parliament has seen fit to set one of the highest finite terms of imprisonment in the criminal law as a maximum sentence - that is in this country. It still strikes at the heart of public

confidence in parliament as an institution and I agree that breach of public confidence cases deserve the denunciation of the court on behalf of the community to such an extent that sentences should carry with it, not just accountability for those who are guilty but also to act as a deterrent to others who might be tempted to transgress.

[72] Your actions were deliberate. The value of the benefits that you received were neither, in my view, insignificant nor insubstantial.

[73] Your culpability when applied to the role of the court in these circumstances to denounce your conduct and show you are being held responsible and accountable and deter others is in my view such as to warrant a sentence of imprisonment.

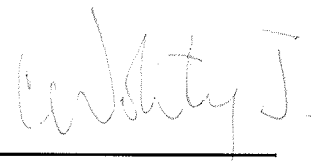
[74] The Crown submits that a starting point should be towards the midpoint of the range available and it points relying on cases such as *Field, Nua* and *R v Palmer* [2004] NZCA 41 at somewhere up to 6 years imprisonment. That is too high. For the reasons I have traversed I think your culpability places you within the lower range of the continuum and I assess that at 3 ½ years imprisonment.

[75] From that you are entitled to a credit for your contributions to your community, as a politician who has perhaps gone beyond the normal call of that job but also as a businessman, a philanthropist and a humanitarian in these lands. I think a reduction of one-third of the starting point, that is 14 months reduction as a generous reflection of that.

[76] Your sentence is 2 years, 4 months imprisonment.

[77] I also order that Dr Agnew's medical reports provided to the Community Probation Service be forwarded to the Superintendent of Arorangi Prison.

[78] Thank you, stand down.



Colin Doherty, J