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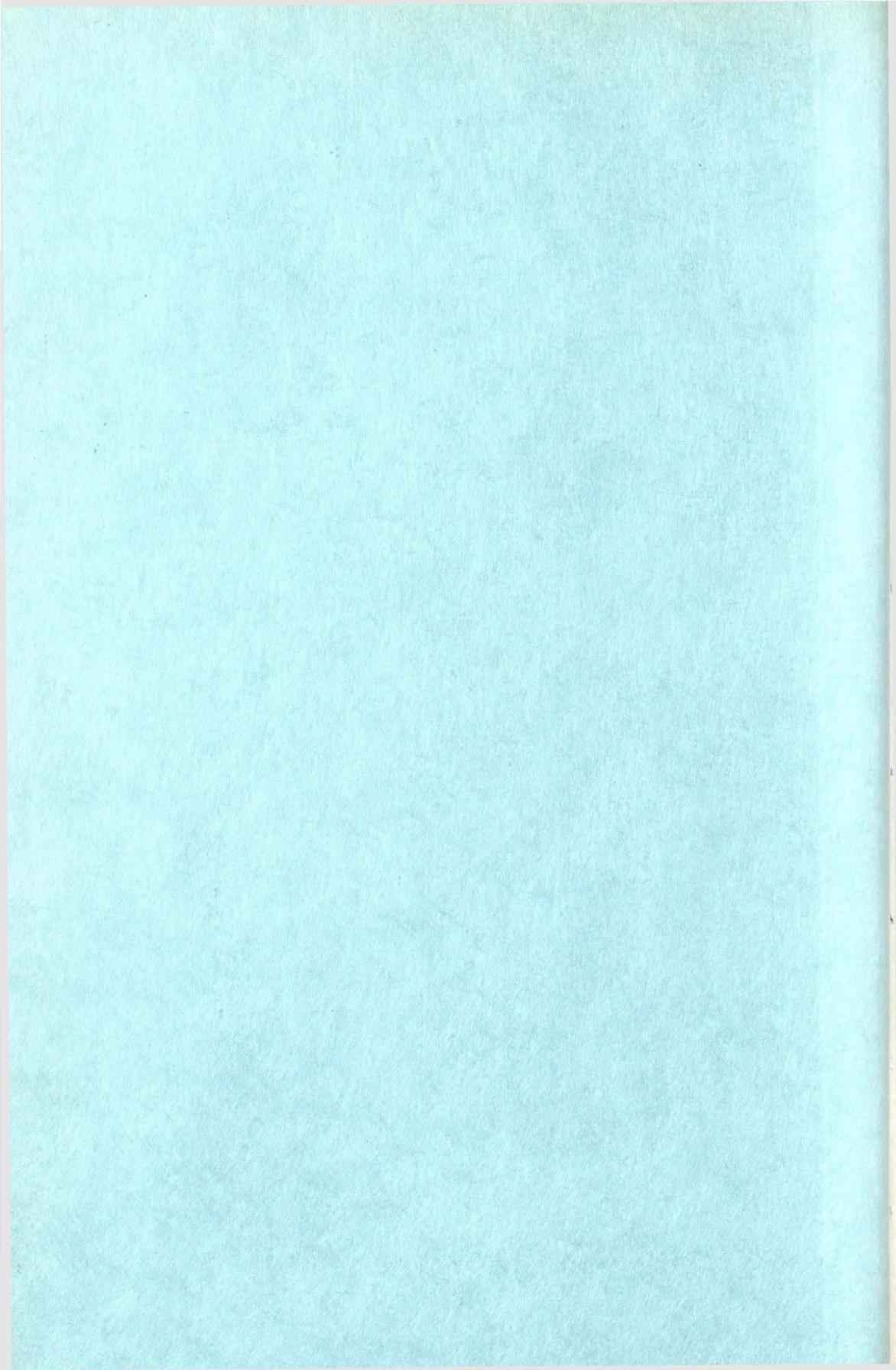
**ROYAL COMMISSION TO INQUIRE
INTO CERTAIN MATTERS RELATED
TO DRUG TRAFFICKING**

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REPORT OF THE ROYAL COMMISSION
TO INQUIRE INTO
CERTAIN MATTERS RELATED TO DRUG TRAFFICKING

Commissioner: The Hon. Mr Justice D.G. Stewart

MARCH 1983

CONTENTS

PART ONE

Page

History and Conduct of the Commission

- | | | |
|-----|--------------------------------|----|
| (a) | Constitution of the Commission | 2 |
| (b) | Terms of reference | 7 |
| (c) | Investigations | 10 |
| (d) | Hearings | 11 |

PART TWO

Terrence John Clark and persons who provided financial or legal services to him

- | | | |
|-----|----------------------------|----|
| (a) | Terrence John Clark | 14 |
| (b) | George William Stuart Boyd | 19 |
| (c) | Edward Poulter Leary | 22 |
| (d) | Kevin Ryan | 24 |
| (e) | Robert Scott | 25 |
| (f) | Karen Mary Marie Soich | 27 |
| (g) | Peter Aldridge Williams | 33 |

PART THREE

- | | | |
|-------|--|----|
| (i) | Term of reference (a):
Transfers of money between Australia and
New Zealand | 35 |
| (ii) | Terms of reference (b), (c) and (d):
Assistance rendered to Terrence John Clark
by the provision of banking, financial, legal or
other services by any person connected with
New Zealand in respect of any relevant transfer
of money or investment thereof | 51 |
| (iii) | Term of reference (e):
Identification of real or personal property
falling within (e) (i)-(iv) | 78 |
| (iv) | The Nominee Company System | 86 |

PART FOUR

- | | |
|---------------------------------|----|
| Conclusions and Recommendations | 92 |
|---------------------------------|----|

APPENDIXES

- | | | |
|-------------|---|-----|
| Appendix A: | Commonwealth of Australia terms of reference | 97 |
| Appendix B: | New Zealand terms of reference | 101 |
| Appendix C: | Allegations put to Terrence John Clark by
the Commission | 106 |

N.B.: For key to source abbreviations used in the report see next page.

ABBREVIATIONS USED IN TEXT

Whenever in the text the source of some particular part of the evidence is referred to by the Commission such is indicated by the use of the following abbreviations each of which has the meaning assigned to it hereunder:

(NZ T)	=	New Zealand Transcript
(NZ CT)	=	New Zealand Confidential Transcript
(NZ E)	=	New Zealand Exhibit
(T)	=	Australian Transcript
(CT)	=	Australian Confidential Transcript
(E)	=	Australian Exhibit
(CE)	=	Australian Confidential Exhibit

The numerals which follow these abbreviations in the text itself indicate the relevant page(s) of the transcript of evidence or the number allotted to the relevant exhibit, as the case may be.

PART ONE

History and conduct of the Commission

(a) Constitution of the Commission

On 30 June 1981 the Governments of the Commonwealth of Australia and of the States of New South Wales, Victoria and Queensland, jointly announced the establishment of an inquiry into the alleged criminal activities in Australia of Terrence John Clark and other persons associated with him.

To conduct that inquiry those governments appointed the Hon. Mr Justice D.G. Stewart, a Judge of the Supreme Court of New South Wales, as a Royal Commissioner pursuant to the provisions of legislation concerning Royal Commissions enacted by the Commonwealth and by each of the relevant States. That Commission conducted its inquiry under the title 'Royal Commission of Inquiry into Drug Trafficking' (hereinafter referred to as 'the Australian Commission').

The terms of reference of the Commission issued by the Government of the Commonwealth of Australia are set out in Appendix A to this report. The terms of reference issued by the three States are similar but where the terms of reference issued by the Commonwealth refer to breaches of Commonwealth laws the terms of reference issued by the States refer to breaches of the laws of the respective States.

The Australian Commission in accordance with its terms of reference delivered its reports to the four governments on 28 February 1983. It is anticipated that those reports will be tabled in the four parliaments in due course, but probably not earlier than April or May of 1983.

Because of Terrence John Clark's New Zealand background and the fact that his early drug trafficking activities took place there, it was considered that there would be a large body of material in New Zealand of interest to the Australian Commission which would not under normal circumstances be available to it. Preliminary investigation by the Australian Commission had also revealed that a number of significant former associates of Clark were resident in New Zealand and therefore outside the Australian Commission's jurisdiction. Additionally, it was believed that Clark had made use of banking and financial institutions and engaged certain professional services in New Zealand. Evidence involving those matters was not subject to the Commission's powers to require the production of documents and other information.

Thus it became evident early in the life of the Australian Commission that notwithstanding the level of cooperation and assistance being given by New Zealand authorities, it was desirable for arrangements to be made for the taking of evidence, in a formal sense, in New Zealand.

In a letter to the Prime Minister of Australia on 16 November 1981, the Royal Commissioner indicated the desirability of some form of Commission being issued to him by the New Zealand Government which would permit the calling of evidence and the production of documentary material in that country, in aid of the Commission's Australian terms of reference.

The matter was subsequently discussed by the Governments of Australia and New Zealand and on 26 November 1981, the New Zealand Attorney-General and Minister of Justice, the Hon. J.K. McLay, M.P., issued a media statement in Wellington in the following terms:

'The New Zealand Government has informed the Australian Government that it is prepared to appoint the Australian Royal Commission of Inquiry into Drug Trafficking as a Commission of Inquiry under New Zealand law. This follows an informal approach from the Australians. This will enable the Commissioner, the Hon. Mr Justice D.G. Stewart, to extend the scope of his inquiry from Australia to New Zealand, and particularly will enable him to compel the appearance of witnesses living in New Zealand, and also to conduct hearings in this country.

'The inquiry, which was established jointly by the Queensland, New South Wales, Victoria and Australian Commonwealth Governments, is basically directed towards the Australian drug dealing activities of Terrence John Clark, also known as Alexander James Sinclair. It arises in part because the Australian police authorities have a number of matters outstanding in respect of his activities which cannot, for obvious reasons, be dealt with at this stage by the ordinary courts. The New Zealand Police have indicated that at this stage they have no such outstanding inquiries. However, the Australian inquiry has revealed that there might be persons in New Zealand with knowledge of Clark's drug dealing activities in Australia, and particularly with knowledge as to how he has disposed of the proceeds of his illicit trade.

'The Australian Royal Commission's jurisdiction is such that it cannot compel or summons witnesses from outside Australia to appear before it and give evidence on oath. By appointing Mr Justice Stewart as a Commission of Inquiry in New Zealand under our Commissions of Inquiry Act 1908, he will be able to come to this country and conduct such inquiries as are necessary to supplement his work in Australia.

'At the suggestion of the Australian authorities the terms of any New Zealand inquiry will be no wider than those under which the Australian Commission is conducting its work. Furthermore, the New Zealand part of the inquiry will obviously have to comply in every respect with this country's statute and case law. Thus the terms of reference of any New Zealand inquiry will have to be very carefully drafted in consultation with the Australians. This proposed course of action is highly unusual (in fact it is believed to be without precedent). In very substantial part it is made necessary by the fact that drug dealing is an international trade and where appropriate can only be investigated and detected as a result of international co-operation.

'The establishment of the inquiry in New Zealand would, of course, be intended to further inquiries into illegal activities in Australia. At this stage the New Zealand Police have no evidence of similar activity in this country that has not already been dealt with by the police or the courts. However, I said some months ago we would be closely following the work of the Australian Royal Commission and that if as a result there was any indication of a need for further investigations or inquiry in New Zealand, that will certainly be done forthwith. Any work undertaken by the Royal Commission would be assisted by New Zealand counsel particularly to ensure that it was properly advised on this country's law which, though in some respects similar to that applying in Australia, does have some important differences. For instance, there are certain rights for persons appearing as witnesses to be represented by their own counsel. In addition, consideration will be given to the possibility of the Crown taking a watching brief during any hearings in this country so that matters that might be of concern or interest to the New Zealand authorities are brought immediately to our attention and do not necessarily have to await the Commissioner's final report.

'I have had discussions on the matter with the Australian Attorney-General, Senator the Hon. P.D. Durack, Q.C., but at this stage cannot indicate how quickly the discussions leading up to the terms of reference can be completed. Nor am I in a position to say when the Commission will actually conduct any hearings in New Zealand: that will be a matter for the Commission itself.'

Consultations were subsequently held between the relevant Australian Governments and between the Australian Commonwealth Government, the New Zealand Government and the Commission. Amendments were made to the relevant legislation of the Commonwealth of Australia to enable a Royal Commission to function in a foreign country where appropriate arrangements in that regard had been made with the foreign country, on the basis of either taking evidence pursuant to the Australian Commission or pursuant to an authority issued under the law of the foreign country.

In October 1982 Senior Counsel Assisting the Australian Commission and the Commission's Secretary travelled to New Zealand and conferred with Mr Paul Neazor the New Zealand Solicitor-General and New Zealand counsel. The Attorney-General and Minister of Justice for New Zealand the Hon. J.K. McLay M.P. also deliberated with these persons concerning the terms of reference. On 3 November 1982 the New Zealand Government issued to the Australian Commissioner a commission under the New Zealand Commissions of Inquiry Act 1908. The full text of this Commission is set out in Appendix B to this report.

On 4 November 1982, the Hon. J.K. McLay, M.P., made the following press statement:

'The Australian Royal Commission of Inquiry into Drug Trafficking, the Hon. Mr Justice D.G. Stewart, has been appointed as a Commission of Inquiry into matters relating to drug trafficking to sit in New Zealand. The Attorney-General, the Hon. J.K. McLay, today confirmed Mr Justice Stewart's appointment and that the terms of reference have been approved. The Commission is expected to sit from 22 November 1982 only in Auckland and it will have the power to subpoena witnesses.'

'Mr Justice Stewart was appointed in June 1981 as a Royal Commission of Inquiry in Australia to inquire into possible drug trafficking and related activities of Terrence John Clark (also known as Alexander James Sinclair) and other persons associated with him. Mr McLay said that investigators attached to the Commission have already made many inquiries in New Zealand in conjunction with the New Zealand Police and with Government approval. Other New Zealanders had accepted invitations to give evidence in confidence before the Commission in Australia. It is a matter of public importance to find out about New Zealand participation in Australian drug dealing and it is also important that New Zealand should assist Australian inquiries into drug trafficking as an international criminal activity. At the end of the exercise a report on the New Zealand inquiries will be presented to the New Zealand Governor-General together with a copy of the final report to the Australian Commonwealth and State Governments.'

The fact that a copy of the Australian report is to be delivered to the New Zealand Government has lightened the task of the Commission in making this report, as it is unnecessary to deal herein in detail with evidence and other matters discussed fully in the Australian report.

(b) Terms of Reference

As indicated on page 5 the full text of the New Zealand Commission is set out in Appendix B to this report.

Stated briefly, the Commission issued by the New Zealand Government required the Commissioner to inquire into and report upon the following matters:

(a) Whether Terrence John Clark, or any person associated with Terrence John Clark, in connection with any illegal activity, transferred money to New Zealand -

(i) For investment in New Zealand; or

(ii) With intent by any means to transfer the money back to Australia -

and, if so, by what method or agency the money was so transferred:

(b) Whether in connection with any transfer or investment of money described in paragraph (a) any person connected with New Zealand assisted Terrence John Clark by the provision of banking, financial or legal services or by procuring the provision of such services:

(c) If assistance so provided involved the provision of banking, financial or legal services, what services were provided:

(d) If the assistance was other than the provision of banking, financial or legal services, what was the nature of it:

(e) Whether any person connected with New Zealand has or has had in his possession, custody, or control -

(i) Real or personal property of Terrence John Clark purchased with money obtained from illegal activities; or

- (ii) Real or personal property received, whether directly or indirectly, from Terrence John Clark; or
- (iii) Real or personal property into which property of Terrence John Clark has been converted or for which property of Terrence John Clark has been exchanged; or
- (iv) Real or personal property obtained by means of money received, whether directly or indirectly, from Terrence John Clark.

The New Zealand Commission empowered the Commissioner to have regard during the course of his New Zealand inquiry to evidence obtained by him in the course of his sittings in Australia pursuant to the powers conferred upon him by the Australian Letters Patent. The Commissioner was required by the New Zealand Commission to report to His Excellency the Governor-General of New Zealand in writing under his hand, not later than 31 March 1983, his findings and opinions in relation to his inquiry. In addition he was required to make such recommendations as he thought fit in respect thereof.

As indicated by Mr McLay in his statement of 26 November 1981, this was the first occasion upon which a Royal Commissioner appointed pursuant to Letters Patent issued in Australia had also been issued with a Commission by the Government of another country. The subsequent amendments made to the Commonwealth of Australia Royal Commissions Act 1902 in May 1982 provided, generally speaking, that where by Letters Patent a commission to make inquiry into and report upon matters has been issued to a person and an authority to inquire into and take evidence in relation to significantly related matters is issued under a law of another country to that person, information obtained or evidence taken in that other country may be used for the purposes of the commission in Australia. It was also enacted that the Commissioner may administer an oath or affirmation to any person appearing as a witness in that other country. For this to occur, however, the Commonwealth Attorney-General must be of the opinion that the matters to be inquired into are the same or substantially the same or are significantly related and that Australia and the other country concerned must have made certain arrangements in relation to the matters.

Pursuant to these provisions the then Commonwealth Attorney-General, Senator the Hon. P.D. Durack, Q.C., subsequently furnished the Royal Commissioner with his written opinion that the matters specified in the New Zealand Commission were significantly related to the matters described in the Letters Patent issued by the Administrator of the Commonwealth of Australia.

The Commission sat in Auckland, New Zealand, and heard evidence on 22, 23, 24, 25, 26, 29 and 30 November and 1 December 1982. The intention to hold these sittings was notified widely in the New Zealand press. These relatively short sittings were made possible by the outstanding cooperation of the New Zealand Police force, with which the Commission had established an excellent working relationship and by virtue of the fact that several witnesses resident in New Zealand gave evidence voluntarily to the Australian Commission in Australia.

The fact that the Commission was able to sit in New Zealand as well as Australia proved to be of enormous value.

(c) Investigations

The Commission early appreciated how important it was to be able to employ investigators to make inquiries in New Zealand. In March 1982 Mr R.J. Walton, O.B.E., E.D., the Commissioner of the New Zealand Police force met in Sydney with the Royal Commissioner and Senior Counsel Assisting the Australian Commission. A proposal to undertake extensive inquiries in New Zealand was developed. Mr Walton made available in New Zealand experienced New Zealand detectives to work with Australian detectives who had been seconded to the Australian Commission.

Investigators attached to the Australian Commission made visits to New Zealand on seven separate occasions. On each of the occasions that the Australian investigators were in New Zealand they worked in close liaison with the New Zealand authorities and enjoyed the cooperation of the New Zealand Police force. The longest period that Commission investigators were in New Zealand was from 5 June 1982 to 10 July 1982, when five investigators worked with five senior police officers made available by the New Zealand Police force. Each Commission investigator worked with a New Zealand police officer. Facilities such as access to typists, use of police stations, office premises and the like were made freely available. Evidence was obtained from individuals, firms of solicitors, accountants, banks and other financial institutions. Persons were interviewed in prisons and the prison authorities afforded every assistance. Commission investigators and New Zealand police officers working together interviewed and obtained statements from over 115 persons during the course of their New Zealand inquiries.

Without the whole-hearted cooperation and assistance of the New Zealand Police force and other Government instrumentalities the obtaining of this evidence would have been well nigh impossible. Not only did the assistance of the New Zealand Police prove invaluable for the gathering of evidence placed before the New Zealand Commission but it was also of great assistance in providing documentary evidence to the Australian Commission. In addition members of the New Zealand Police force were of great help in arranging for several witnesses who were resident in New Zealand to go to Australia to give evidence before the Australian Commission.

(d) Hearings

As indicated above the Commission sat in New Zealand for eight days. Thirty-eight witnesses were heard and 51 documentary exhibits were received into evidence. Four hundred and eighty-four pages of notes of evidence were taken. The New Zealand Government provided court accommodation in the Southern Cross building in High Street, Auckland for the hearing of evidence. The New Zealand Justice Department provided three administrative officers who recorded notes of evidence using word processors. The New Zealand Police Department provided guards during the Commission's hearings. During the period immediately before and in the course of the hearings Australian investigators again working with officers of the New Zealand Police force located witnesses, served subpoenas and helped prepare evidence to be placed before the Commission. The New Zealand Government provided a secretary to the New Zealand Commission in the person of Mr M.J. Hawkins, a retired registrar of the New Zealand High Court. Messrs D.S. Morris and S.B.W. Grieve of the firm of Meredith Connell & Co. Barristers, Solicitors and Notaries Public were appointed by the New Zealand Attorney-General and Minister of Justice as Counsel to assist the Commission.

The terms of reference of the Commission authorised and empowered the Commissioner to conduct the inquiry in such manner as he thought fit and specifically empowered him to exclude the public from any hearing at which evidence was taken or at which submissions were made in relation to the evidence. This power was expressed in such a way as not to limit any of the Commission's other powers to hear proceedings in private or to exclude any person from any of the proceedings.

At the outset the Commissioner drew attention to the above powers to sit in private and set out guidelines concerning the procedure he proposed to adopt at the hearings. He directed that where evidence was heard in private not even the fact that a person gave evidence was to be published. The majority of the evidence was heard in private. This course was adopted for two main reasons. The first was to overcome the reluctance of some witnesses to give evidence in public. This reluctance could arise from fear of reprisal or fear of publicity. The second was to avoid unfairness which could arise if some innocent person's name were to be mentioned in a context which might lead to an unwarranted inference of involvement on the part of that person. The Commissioner decided whether to hear each person privately or publicly according to the circumstances which obtained in each case.

The Australian Commission sat to hear evidence in Australia on 185 days and heard 480 witnesses. It received in Australia 1557 documentary exhibits. The transcript of evidence received in Australia totalled 13,876 pages. The documentary exhibits comprised 101,000 pages. As will be noted the New Zealand terms of reference provided that the Commissioner may have regard to evidence obtained in the course of the sittings in Australia pursuant to the powers conferred upon him by the Letters Patent issued to him by the Administrator of the Government of the Commonwealth of Australia and by the Governors of the States of New South Wales, Victoria and Queensland. The Commission did in fact have regard to such evidence both during the hearings in New Zealand and in preparing this report.

The Commission wishes to express its appreciation to all those individuals and authorities mentioned above.

PART TWO

Terrence John Clark and persons who provided financial or legal services to him

(a) Terrence John Clark

The following is a resumé of Clark's career, with particular relevance to New Zealand, culled mainly from evidence gathered by the Australian Commission. Further details of Clark's criminal activities, particularly in Australia, are set out in the Australian report, Part Two (a).

Terrence John Clark was born at Gisborne in New Zealand on 12 November 1944 and was before the courts before he was 18 years of age. On 24 August 1962 he was convicted in the Auckland Magistrates Court of theft and of interfering with a motor vehicle and he was placed on probation for eighteen months. On four occasions between 1965 and 1971 he was also convicted of theft and on one occasion of receiving stolen property. He did not receive his first prison sentence, however, until 12 March 1971 when he was convicted of burglary and five charges of receiving stolen property. He was released from prison on 8 July 1974.

After his release from prison Clark turned to drug trafficking, beginning by distributing cannabis which had been illegally imported into New Zealand. The importations were arranged by Christopher Martin Johnstone and associates who generally used seamen employed by the Straat line of ships to bring the cannabis to New Zealand. Clark's enterprises prospered and he was soon selling considerable amounts of cannabis through his dealers, who included Joseph Martin, Errol Hincksman, Peter Fulcher, Valerie Kairau, Gregory Ollard, James Shepherd and Douglas Wilson.

Soon Clark decided to enter the importing side of the business and agreed with others early in 1975 to buy a vessel named Catana for transporting drugs from South East Asia to New Zealand. But before the sale could be finalised, there was a falling out between Clark and the other persons concerned in the purchase and the project came to nothing.

In 1975 Clark made several trips to South East Asia, bringing thai sticks to New Zealand. He began using couriers, particularly females, to carry drugs and also turned his attention to heroin, which had the advantage of being much more valuable in relation to its volume than cannabis.

On 3 October 1975 Clark and an associate named Raymond Brunnell were arrested and charged with importing heroin into New Zealand by the use of a courier. Clark, having been admitted to bail on this charge, absconded and left New Zealand. Clark and Brunnell were to stand trial together but in view of Clark's absence Brunnell was tried alone. After two trials, the first of which aborted, he was eventually acquitted.

Clark based his activities in Australia for the next couple of years, although his links with New Zealand remained strong. In March 1976 cannabis imported into New Zealand on the vessel Brigadoon was sold there by his dealers. He also arranged for consignments of heroin to be sent to New Zealand from the heroin he imported into Australia during the years 1976 to 1979.

It is difficult to account accurately for Clark's travel movements while he was in Australia because of his continued use of false names and because on occasions his associates used the same names.

It was suggested to the Commission that Clark changed his name by deed poll in New Zealand in December 1978 to Terrence John Phillips. Certainly there is evidence of a deed poll executed on 15 March 1979 in New Zealand in which Clark effected a change of name to Terence Alexander Sinclair. He appears subsequently by common usage, however, to have adopted the name Alexander James Sinclair. The Commission has identified over thirty names used on different occasions by Clark. Some names were used only once, some he used frequently.

In the second half of 1977 and the first half of 1978, Clark's drug trafficking activities in Australia flourished. Heroin was imported regularly by couriers and distributed, mostly in Sydney, but also in Melbourne and Brisbane. From these criminal activities Clark derived a huge income.

On 9 June 1978 Clark's criminal career was abruptly interrupted. On that day he was visiting Brisbane in company with a number of people including James Shepherd, Douglas and Isabel Wilson and Stephen Brian Johnstone, brother of Christopher Martin Johnstone. It appears from the evidence that some of the group behaved in a manner which disturbed the manager of the motel at which they were staying whereupon the manager telephoned the police who subsequently took the whole group into custody.

Two consequences followed which hold an important place in the telling of any history of the Clark syndicate. The first was that Douglas and Isabel Wilson, unbeknown to them, were tape recorded in a long and revealing interview concerning Clark's criminal activities. The second consequence was that two weeks later, on 25 June 1978, Clark was extradited to New Zealand to face the heroin importation charge from which he had absconded two years earlier. As the future was to show, his chances of acquittal had improved for various reasons including the prior acquittal of his associate, Brunnell. The venue of his trial was changed from Auckland to Wellington and Clark was acquitted on 31 October 1978. Within a few weeks, he had returned to Sydney where he spent a weekend with Karen Soich, an employee of the lawyer who had defended him at his trial in Wellington. Soich had become infatuated with Clark.

Clark returned to New Zealand but attempted to enter Australia again in December 1978. He and Maria Muhary with whom he was then living as man and wife were detected using the names Mr and Mrs Hemmings and were turned back by immigration officers at Sydney Kingsford Smith Airport. But in March 1979 Clark was back in Australia. On this visit he stayed mostly at hotels in Sydney but he also travelled to Melbourne and Adelaide. He left Australia for the last time from Melbourne on 26 April 1979. After a few weeks in South East Asia, Clark went on to the United Kingdom where he has remained, apart from some weeks in the United States of America in August and September 1979.

On 31 October 1979 Clark was arrested in London and charged with the murder of Christopher Martin Johnstone, the so-called 'Mr Asia'. He was also charged with two conspiracies, one to import illegal drugs into the United Kingdom and one to supply illegal drugs in the United Kingdom. Eleven other defendants were tried with him, some for murder and conspiracy, others only on the conspiracy charges. After a trial lasting some six months Clark was convicted on all counts. On 15 July 1981 he was sentenced to life imprisonment on the murder charge. The presiding judge ordered that he serve not less than 20 years. On the charge of conspiracy to import illegal drugs he was sentenced to 14 years' imprisonment and on the second conspiracy charge to three years' imprisonment. He was also ordered to pay £1 million towards the costs of the prosecution. Clark appealed unsuccessfully against his conviction and sentence but succeeded in having the order for the payment of costs varied. The amount was reduced to £175,000, none of which has, to date, been paid.

The Commission amassed considerable evidence of criminal activity in Australia by Clark. This is described in the Australian report Part Two (c). Two serious crimes committed by Clark in Australia involved New Zealand nationals as victims and, it is believed, should properly be mentioned in this report. The Commission is satisfied that Clark shot and killed Gregory Paul Ollard and Julie Diane Theilman near Sydney on either 14 or 17 September 1977.

Ollard was born in New Zealand on 16 October 1951. He was educated at Auckland Grammar School where he met Duncan Robb. Both were to become members of the Clark drug syndicate. Ollard was convicted of theft in New Zealand on 28 August 1973 and was sentenced to six months' imprisonment which he served at Wi Tako Prison. His fellow prisoners included Clark himself, Wayne Shrimpton and Errol Hincksman. The latter two also became members of the Clark group. Ollard had been trafficking in drugs since about 1971 and, on his release from prison, he resumed his drug trafficking, now working with Clark. In Auckland, Clark and Ollard were major distributors of cannabis obtained from Christopher Martin Johnstone, and Ollard also distributed cannabis in Wellington. Ollard moved to Australia in the middle of 1975 and until his death in September 1977 lived mainly in Sydney. There he distributed heroin as a member of the Clark syndicate as well as independently.

In Sydney Ollard met Julie Diane Theilman in late 1976 or early 1977. Theilman was born in New Zealand on 21 October 1956, and first came to the notice of New Zealand police in June 1976 when, at the age of 19, she was convicted in Auckland on a charge of keeping a brothel and fined \$200. Two months later she was put on one year's probation for possession of heroin.

The skeletal remains of Ollard and Theilman were discovered in August 1982 in separate locations near Sydney by investigators attached to the Australian Commission. This discovery ended widespread speculation as to their whereabouts. Further details relating to their murder by Clark are contained in the Australian report, Part Two (c)(ii). The remains of Ollard and Theilman were conveyed from Australia to New Zealand in November 1982 by investigators attached to the Australian Commission and released to their relatives.

As has been mentioned above Clark is presently serving a prison sentence in England for his part in the murder of Christopher Martin Johnstone and other matters. In view of the serious allegations made against Clark by persons appearing before the Australian Commission it seemed to the Commission desirable, indeed required by principles of natural justice, that he should be made aware of the nature of these criminal allegations and given an opportunity of commenting on them. Accordingly the Commission prior to September 1982 caused to be delivered to Clark a detailed summary of relevant allegations made against him and advised him that if he wished he would be given the opportunity of responding to the allegations in an interview the Commission proposed to conduct with him in the prison in England in which he was incarcerated. A copy of the summary of allegations sent to Clark appears as Appendix C to this report.

On Friday, 24 September 1982 the interview took place between the Australian Commission and Clark at H.M. Prison Parkhurst, a maximum security prison on the Isle of Wight. Clark was legally represented and, at his request, his sister was present. The interview was recorded in shorthand and, again at Clark's request, by way of a tape recording.

The detailed summary of allegations was put to Clark in the course of that interview, but apart from saying that he was involved in the illegal importation, distribution and growing of cannabis in Australia, Clark denied each of those allegations although he did admit that he had no legal source of income during his time in Australia. He also admitted that he had sent money out of Australia using couriers and that he had obtained and used false passports to further his activities in such numbers that he described them as 'like confetti'. Details of the activities of Clark and his associates concerning the use of false identities and the use of illegally obtained passports are set out in the Australian Commission's second interim report made on 17 May 1982 to the four relevant governments in Australia.

(b) George William Stuart Boyd

Boyd is a solicitor and a member of the firm of T.J. Doole & Partners carrying on practice at Parnell in Auckland. He was formerly employed by that firm as a managing clerk. Boyd was born in South Africa in 1954, and is now an Australian citizen living in New Zealand.

T.J. Doole & Partners acted for Robert Scott from approximately 1970 until about the end of 1978, when Scott left New Zealand and settled in Australia. (CT 7804) According to Scott, he first met Clark in early 1979. He then commenced working for Clark. Thereafter, Scott returned on occasions to New Zealand where he had business interests in relation to which T.J. Doole & Partners acted for him. (CT 7805)

Before the Australian Commission, Doole gave evidence that he understood that Scott met Clark who was using the name Sinclair in Australia following Scott's arrival there in late 1978. (CT 7805) Boyd gave evidence to the Australian Commission that he first had contact with Clark in or about November 1978. The firm T.J. Doole & Partners acted in relation to moneys of Clark transferred from Australia to New Zealand and their subsequent application towards the purchase of and later improvements to a property acquired by Clark in the Bay of Islands. (CT 7805) The details of those transfers appear in Part Three.

Boyd also acted for Clark in connection with proposed purchases of land in the Soqulu plantation development in Fiji in the names of Sinclair and Maria Muhary. Some details of that matter appear in Part Three.

In August 1979, some months after Clark had left Australia for the last time and travelled to the United Kingdom, Boyd flew to Melbourne to escort Maria Muhary back to New Zealand. Boyd told the Australian Commission that the circumstances of that matter were that he received a telephone call from Clark:

and he had told me that he had split up with Muhary ... and that she was returning to New Zealand and that he wanted me to go and meet her in Melbourne and escort her back to Wellington in case she experienced any difficulties. I went to Melbourne, met her, and then travelled back with her to Wellington and then I went back to Auckland. (CT 7808)

On 8 May 1979 Boyd signed a letter to Credit Suisse, Singapore assuring the manager there that his firm acted for Mr R.A. Gorrie (one of Clark's aliases) and that Mr Gorrie's assets exceeded \$1 million. Boyd gave evidence to the Australian Commission that he received a telephone call from Clark whom Boyd then believed was in Singapore, telling him that he had changed his name to Gorrie and that he wanted a reference. (CT 7808)

Boyd also acted for Clark in the transfer into the name of Goldfinch, an alias on that occasion used by Clark, of title to a property at Waihi which Clark had acquired from a man named Patrick Norton-Bennett. (CT 7808) The relevant circumstances of this transaction are dealt with in greater detail at pages 84 and 85. Boyd told the Australian Commission that Clark did not tell him why on that occasion he was using the name Goldfinch, but that Boyd supposed that the reason was that Clark did not want it to be known that he owned the property. (CT 7809)

In 1980 after Clark had been arrested in England, Boyd was asked to obtain birth certificates of Soich and Clark. The reason for this request as related by Boyd to the Australian Commission was that Soich and Clark wanted to marry and were required to produce evidence of matters recorded about their births and also about the death of Clark's second wife Norma. (CT 7809)

Boyd further acted in the interests of Clark when he (Boyd) wrote to Yorkstar Motors in Sydney to collect a refund of \$3569.09 being a deposit paid upon the purchase of a Mercedes motor vehicle to be delivered in West Germany. The subsequent application of those moneys in New Zealand is dealt with in Part Three. Before the Australian Commission, Boyd said that he was unsure from whom he received instructions to so write - whether those instructions were received from Scott or from Clark's English solicitors. (CT 7810)

Boyd travelled to London to see Clark following his arrest. The evidence before the Australian Commission is to the effect that T.J. Doole & Partners received a request from Clark's English solicitors that both Boyd and Doole attend to see Clark in England because there were various matters relating to his affairs which Clark wanted to discuss. According to Boyd, he alone travelled to England and visited Clark and discussed with him certain aspects of his affairs including the property in the Bay of Islands and the completion

of building work there, default assessments issued against Clark by the New Zealand Inland Revenue Department, problems about the land in Fiji and the setting up of a family trust for his son and his de facto wife Maria Muhary. (CT 7811) Boyd was also aware that Messrs E.P. Leary and P.A. Williams also travelled to England to see Clark. (CT 7811)

When Doole and Boyd gave evidence before the Australian Commission in June 1982, Boyd stated that his firm did not then and had not since late 1979 held any moneys in trust for Clark. (CT 7813)

(c) Edward Poulter Leary

Leary is a barrister and solicitor practising in Auckland. (CT 9091) He was born on 14 November 1944 in New Zealand, (CT 9090) and studied law at Auckland University Law School. Before he was admitted to practise law, Leary worked for Williams for approximately two years. Upon his admission in 1972, Leary commenced practise on his own account. (CT 9091)

The Australian Commission had received evidence that Leary had acted for Clark in a number of matters and it was decided that information be sought from him. Accordingly, on 24 June 1982 a letter from the Commission was forwarded to Leary which set out certain questions which it was desired that he answer. According to Leary, this letter was delivered to him on 28 June 1982 (E 990 p10) and he thereafter spent 'many hours endeavouring to locate material' to answer those questions. (CE 987)

Leary appeared before the Australian Commission and gave evidence to it on 22 July 1982. He also appeared before the New Zealand Commission and gave evidence to it on 23 November 1982. His evidence before the Australian Commission included the tender of written answers prepared by him to the letter of 24 June 1982. The greater part of the evidence so given to the Commission by Leary is substantially set out and reviewed in other places in this report.

Leary was asked when he first met Clark and he replied that he thought that in the late 1960s when Leary was a clerk in the office of Williams, the latter 'had a client named Terrence John Clark'. (E 990 p10) Leary said that he did not act for Clark, who was 'one of many clients'. (E 990 p10) Leary told the Australian Commission that he first acted for Clark in 1974. (CT 9097) According to Leary, Clark telephoned him and then came in to his office and consulted Leary about the question of access to the children of his first marriage. (CT 9097; E 990 p9) Leary said that at that time Clark described his occupation as upholsterer. (CT 9097) According to Leary, other matters mentioned by Clark to him on that occasion included that he reminded Leary that he had been a client of Williams and that he told him that he was a beneficiary in two estates in Australia. Before the Australian Commission Leary recalled that the name of one such estate was that of De Beer Austin and

that it was administered by the Public Trustee of Sydney. That estate, according to Clark, included as assets some precious stones. According to Leary, he discovered from Williams in 1978 that it was not a substantial estate. (CT 9098) The Commission notes that according to the Public Trust Office in Sydney the estate was that of one John de Bruno Austin. It is further noted that the dutiable estate was A\$60,931 and Clark's entitlement was one ninth of the nett estate. (E 1271)

Leary acted for Clark in a variety of matters. He acted for Clark upon charges laid against Clark in 1975: first on a charge of possession of cannabis, later on a charge of smoking cannabis and later still on a charge of importing heroin. The proceedings relating to the latter charge were only concluded after three years.

Leary also acted for Clark in litigation with the New Zealand Inland Revenue Department; in relation to transfers of property; in connection with a property acquired by Clark at Okiato Point, Russell, in the Bay of Islands when he recommended to Clark that he engage as architect his own brother John Milne Leary (who is hereafter referred to in the report as J.M. Leary) and when he acted upon building disputes and other matters; in aspects about the welfare of his de facto wife and of his children; and when Clark formally changed his name to Sinclair.

The details placed before the Commission of Leary's conduct in acting for Clark in these matters are set out in Part Three of this report. Certain conclusions that the Commission has reached in relation to this conduct are also set out in Part Three.

(d) Kevin Ryan

Ryan is a barrister and solicitor practising in Auckland. He commenced practise in 1956 and has had wide professional experience in connection with criminal matters. (NZ CT 12592) He appeared for Brunnell when in 1975 he was with Clark charged with the importation of heroin. Brunnell was acquitted. He also appeared in 1978 as Junior Counsel to Williams in the successful defence of Clark upon the trial of that charge against him. When Clark was in custody in England towards the end of 1979, it was intended that Ryan travel there to see Clark. However, Ryan did not go.

Aspects of these matters together with another matter in which Ryan acted for Clark appear in Part Three of this report. Certain conclusions as to Ryan's conduct have been reached by the Commission and are also set out in Part Three.

(e) Robert Scott

The Commission both in Australia and New Zealand heard evidence of the extensive involvement of Scott in financial transactions for the Clark organisation.

Scott was born in Wellington, New Zealand on 26 May 1937. He left school when he was aged 15 years. He then worked at a number of jobs, including in freezing works and on building projects apparently as a labourer.

He first travelled to Australia in 1958 and remained in Australia until 1961 or early 1962. He then travelled to the United Kingdom and was in Europe for about four years. He then travelled to Canada where he remained until he returned to New Zealand in 1967 or 1968. He married in New Zealand in 1968, but that marriage has since ended in divorce.

From 1968 until early 1979 Scott lived in New Zealand and made occasional visits to Australia. In early 1979 he travelled to Australia and set up residence in Sydney where he has since lived permanently, making trips to New Zealand, Asia and Europe. (CT 2469-71)

Scott gave evidence to the Australian Commission that he first met Clark who was using the name Sinclair in early 1979. When he first appeared before the Australian Commission Scott said that that meeting with Clark took place in Sydney at a restaurant. Scott said that Clark was with a group of people which included James Shepherd whom Scott had known in New Zealand since about 1972. At the time of that meeting, Scott knew that Shepherd had a criminal record in New Zealand. He assured the Commission that he had 'no idea' what Shepherd was doing in Sydney at that time. (CT 2472) However, when Scott later appeared before the Australian Commission he said that he may have first met Clark who was using the name Sinclair in New Zealand, either in Leary's office or with Boyd. (CT 13321-22)

According to Scott, it was from Shepherd that he received the sum of A\$3569.09 with instructions to pay it as a deposit with Yorkstar Motors Pty Ltd in Sydney upon the purchase of a Mercedes motor vehicle to be delivered in Germany. (CT 2472-73)

Following his meeting with Clark in Sydney in early 1979, Scott worked for Clark until approximately the end of that year. At the time of that meeting, Scott had liabilities of more than A\$100,000. His solicitor, who was Boyd, made a proposal to Scott's creditors of payment of ten cents in the dollar which was accepted.

The details of some of the transactions in which Scott was involved are set out in Part Three of this report. In particular, Scott set up and executed the system whereby there was transferred from Australia to New Zealand \$198,764.78 the property of Clark; on occasions he carried cash moneys from Australia to New Zealand; and he attended to crude but until recently undetected transfers of 'laundered' money from Australia to New Zealand.

A more detailed account of Scott's background and his activities in relation to the Clark syndicate are included in the Australian report in Part Two (b) and (f). The conclusions reached and the recommendations made by the Australian Commission are set out in Part Seven of that report.

(f) Karen Mary Marie Soich

Following are some short biographical details of Soich and a resumé of her association with Clark taken from her evidence before the Commission both in Australia and New Zealand. She gave evidence before the Australian Commission on 10 November 1982 and before the New Zealand Commission on 25 November 1982.

Soich was born on 4 March 1956 at Whangarei in New Zealand. She went to a convent school until she was thirteen and completed her secondary studies at a high school. She then studied law at the University of Auckland and obtained her degree in 1978.

She first met Clark after he had been extradited from Australia to New Zealand late in 1978. At that time she was employed by Mr P.A. Williams who was then practising as a barrister in Auckland. Williams had gone to Brisbane after Clark's arrest there on 9 June 1978 and had accompanied him and Detective Sergeant Hill a New Zealand police officer escorting Clark on the aircraft from Brisbane to Auckland. Williams subsequently appeared for Clark at his trial on the heroin importing charge. This trial took place at the Wellington Supreme Court and Soich was delegated by Williams to assist in the preparation of the trial.

She first met Clark in the cells under the Supreme Court at Auckland in the course of her duties and subsequently saw him frequently whilst he was in custody at Mount Eden Prison. Whilst Clark was in custody awaiting his trial, Soich on the instructions of her employer Williams, travelled to Australia. Her purpose for doing so was to go to Brisbane and collect money being held there for Clark from Mr J.M. Robertson, solicitor, who had represented Clark after he had been arrested. She had also been instructed to go to Sydney to obtain information from the Public Trustee's office about a legacy that Clark had informed her of which it was claimed was pertinent to his forthcoming trial. She also wished to obtain information from the Australian Jockey Club which was also said to be relevant to the trial.

She travelled to Australia on 19 August 1978 and produced to Mr Robertson an authority signed by Clark dated 18 August 1978, for Robertson to pay to her the money he was holding on behalf of Clark. This money amounted to A\$27,000. After she received Robertson's cheque for this amount she travelled

to Sydney and deposited it in an account conducted by Williams at the Commonwealth Savings Bank, Martin Place, Sydney. Clark paid her expenses for the journey to Australia and Williams was fully aware of the purposes for it and indeed gave her specific instructions as to what she was to do on behalf of himself and Clark while she was in Australia.

Clark stood trial in Wellington in October 1978 and was acquitted on the 31st of that month. During the trial Soich assisted her employer Williams. She attended a celebration party at a Wellington hotel after the acquittal with Williams and others including Clark and a number of his criminal associates.

Soich travelled from Auckland to Sydney on 24 November 1978 to meet Clark in Sydney. She and Clark had commenced a sexual relationship about the second week in November. She stayed with Clark at the Hilton Hotel occupying the King Suite there on 25, 26 and 27 November 1978. She returned to New Zealand on 27 November 1978 but Clark did not accompany her.

Soich next saw Clark over the 1978 Christmas period when she joined him at Russell and spent a weekend and later approximately a week with him. Soich and Clark next went to Australia on 18 March 1979 when they flew together from Wellington to Sydney after having been to Clark's brother's wedding at Taupo. She was unable to tell the Commission what name Clark travelled under. They stayed together at the Sydney Hilton from 18 to 24 March 1978 this time occupying the Queen Suite and later went to the Wentworth Hotel where they stayed one night. During this period in Sydney Soich and Clark met and associated with James Shepherd and went to Tati's restaurant and there met Roberto Fionna and Malcolm Wynn. The Commission interpolates here that Fionna was an associate of members of the Clark syndicate and that Wynn who was a solicitor practising in Sydney acted for Shepherd a leading member of that syndicate to whom he had been introduced by Williams who had known him in New Zealand. A more detailed description of Fionna and Wynn appears in Part Two (b) of the Australian report. A detailed account of Wynn's activities is set out in Part Two (f) of the same report. The Australian Commission's conclusions and recommendations concerning Wynn are contained in Part Seven of the Australian report.

Soich was asked by the Australian Commission about her knowledge of Clark's source of income. The following questions and answers appear in the Australian transcript:

At this time (i.e. March 1979) had Terry told you what line of business he was in?---He had told me that he was in property, guano mines, fishing vessels, importation of teak furniture, silver-worked surrounds and things.

Had he told you he was in the importation of cannabis?---No.

But he was well known in New Zealand to have been concerned in the importation and distribution of cannabis was he not?---In the past yes.

He told you he no longer did that?---Yes.

...

But where did the money come from? You see, here is this man whose background is, to say the least, questionable, who suddenly, so it seems according to him, has acquired interests in a diversity of businesses in the East and here and there and so forth. He would not have made much money, I would not think, in New Zealand pursuing honest occupations. Where did the money come from for him to get into all these businesses?---You have got to remember at that stage I was acting as a legal representative, it was not my place to ask questions of where is your money coming from or how did you come by your money.

But you were lovers?---As a lover - if I asked him questions he would just shut off from me, walk away, go out of the hotel, leave me, go to the park. (CT 12095-96)

Clark and Soich left Sydney about 26 March 1979 and went together to Adelaide. At that time a half-brother of Soich was living there. At this point the Commission observes that according to Allison Raewyn Dine she and another associate of Clark, namely Kay Reynolds, went to Adelaide at this time and saw Clark where he claimed he had heard the Wilson tapes. Soich denies that she saw Dine (or by inference Reynolds) in Adelaide.

After staying some days in Adelaide Soich flew to Sydney and after staying there one night returned to New Zealand. Her reason for returning to New Zealand was that Maria Muhary had come to Australia. Muhary and Clark had been for some time and were still on occasions living as de facto man and wife.

After leaving New Zealand with Clark on 18 March 1979 Soich never saw him again in New Zealand. Clark and Maria Muhary and their son Jarrod left Australia and subsequently went to the United States. About August 1979 Soich received five or six telephone calls from Clark from there. These telephone calls concerned the future of Clark and Soich. Clark was being evasive with Soich and gave as his reason for not becoming as closely associated with her as she wished, that she may be in danger from his business associates because he had rather abruptly severed his connections with them.

The difficulties in relation to their joint future having been discussed on the telephone Soich subsequently left Auckland on 24 August 1979 and flew to Los Angeles where she stayed until she left for Sydney on 2 September 1979. In March 1979 Clark had given Soich \$10,000. This had been done so that she would have the money to join him no matter where he may be. Soich used part of this money to purchase her ticket from Auckland to Los Angeles and Los Angeles to Sydney. Whilst Soich was in Los Angeles staying with Clark, Clark's ex-wife and his children were staying in a suite at the same hotel. Soich denied that there was a menage a trois but said that it was 'all very civilised'.

During her stay with Clark in Los Angeles Soich met a man called 'Benjie' Benjamin who she agreed was a 'pimp'. Clark and Benjamin were using cocaine together. Soich also met one of Benjamin's prostitutes, a woman named Roxy. Whilst in the United States Clark obtained a so-called 'hot box' which is a device for testing the purity of drugs. Soich presumed that Clark had obtained this article from Benjamin.

After flying from Los Angeles to Sydney Soich flew from Sydney to Auckland on 5 September 1979. She next heard from Clark when he telephoned her about 17 September whilst she was in her apartment in Auckland. At this time she was still employed full time by Williams but had taken leave without pay. Clark asked her to join him in England and after drawing some more money from the account she had opened with the money given to her by Clark she flew to England from Auckland on 18 September 1979. She lived in England with Clark and associated with most of the persons who subsequently stood trial with Clark and her at Lancaster. Soich together with Clark was arrested in London on 31 October 1979, which the Commission observes was 12 months to the day after Clark's acquittal on the importation of heroin charge in Wellington. At the Lancaster trial Clark was charged with the murder of Christopher Martin

Johnstone and with two charges of conspiracy involving illegal drugs. Soich was charged with two counts of conspiracy the first of which involved an alleged offence against the English Misuse of Drugs Act, namely the importation of controlled drugs. The second involved an allegation that with others she was concerned in the unlawful supply of controlled drugs. During the time she was living with Clark in London, Clark was using cocaine regularly and from time to time Soich also used this drug.

The trial at Lancaster lasted for some six months. Clark paid Soich's legal fees. The total legal fees for Soich and Clark were in the vicinity of £300,000. Soich was on bail during the course of the trial but Clark was in custody. The money for legal fees had been invested in a bank in Jersey and approximately £10,000 each week was remitted to the solicitors acting for Clark and Soich. Whilst Soich was on bail she lived on the interest from the invested money. As withdrawals were made to pay for the legal fees the capital dwindled as did the interest. Finally the money ran out and counsel were not paid for approximately the last six weeks of the trial. Soich was acquitted on 13 July 1981. She returned to New Zealand from the United Kingdom on 26 August 1981 because the authorities in that country would not renew her visa. Since her return to New Zealand Soich has been studying for the degree of Master of Laws at the University of Auckland.

Putting aside money expended by Clark on Soich's accommodation in hotels, apartments and the like, and excepting her legal fees at the trial, Clark expended an amount in the vicinity of A\$35,000 on Soich in the way of gifts such as jewellery, motor cars or money. For example, whilst she was in the United Kingdom she was given a Mercedes motor car by Clark but at his request sold it and purchased a Porsche. She later re-sold the Porsche vehicle to the firm of dealers from which it was purchased.

Shortly before their arrest in London Clark and Soich had decided to marry. However their arrest and subsequent trial frustrated their intentions.

When Soich gave evidence before the New Zealand Commission on 25 November 1982 she said that she intended to fly from New Zealand to the United Kingdom the following Saturday and that it was her intention to return to New Zealand on 15 February 1983. She intended to stay on the Isle of Wight where Clark is imprisoned so that she could visit him whenever possible. Clark had made

applications to the English Home Office for permission to marry Soich. So far as Soich was aware these applications had so far been unsuccessful, but her expressed intention as at the time of her giving evidence before the New Zealand Commission was to marry Clark if she were allowed to do so.

The Commission has come to certain conclusions concerning Soich's behaviour which are set out in Part Three (ii) of this report.

(g) Peter Aldridge Williams

Williams practises as a barrister in Auckland. About 25 years ago he was admitted as a barrister and solicitor, and upon such admission commenced practise with a firm but later commenced practise on his own account. He has informed the New Zealand Commission that he commenced practise solely as a barrister in or about 1973. (NZ CT 12566)

Before the New Zealand Commission, Williams was asked when he first acted for Clark. He replied that he was 'led to believe' that his firm acted for Clark 'in some matter' but that he did not himself have a recollection of that matter and understood that an employee of his firm actually handled the case for Clark. (NZ CT 12566)

The matters known to the Commission in which Williams acted for Clark were the importation of heroin charge preferred against both Clark and Brunnell; the extradition in June 1978 of Clark from Australia; and the visitation to Clark in custody in the United Kingdom.

Williams was questioned by the New Zealand Commission about aspects of his acting for Clark, including details of the rewards received for so acting. These matters are reviewed in detail in Part Three of this report. Certain conclusions have been arrived at by the Commission concerning Williams' conduct which are referred to also in Part Three of this report.

PART THREE

- (i) Term of reference (a): Transfers of money between Australia and New Zealand
 - (ii) Terms of reference (b), (c) and (d): Assistance rendered to Terrence John Clark by the provision of banking, financial, legal or other services by any person connected with New Zealand in respect of any relevant transfer of money or investment thereof
 - (iii) Term of reference (e): Identification of real or personal property falling within (e) (i)-(iv)
 - (iv) The Nominee Company System
-

- (i) Term of reference (a): Transfers of money between Australia and New Zealand

Term of reference (a) required the Commission to discover any transfers of money by Clark, or an associate, to New Zealand where those transfers were intended to remain as an investment in New Zealand or to be re-transferred to Australia. The term of reference required that the transfers of money be connected with an illegal activity. This requirement has been amply satisfied as the Australian report demonstrates. Clark himself told the Commission that he had no lawful source of income during his period in Australia between 1976 and 1979.

The Commission here proceeds to examine the evidence before it that Clark transferred across the Tasman money derived from or in connection with his illegal activities in Australia. Unless stated otherwise, all sums of money are stated in New Zealand currency.

On 14 November 1978 there was deposited with T.J. Doole & Partners, barristers and solicitors of Parnell, Auckland, a sum of money to be held in trust by that firm for Clark in an account styled A. Sinclair. Thereafter further moneys were deposited to the credit of that account. The deposits which appear relevant to the terms of reference of the Commission are:

- (1) \$198,764.78: proceeds of sale of shares in Australian companies;
- (2) \$11,340: a notional transfer;
- (3) \$18,511.83: alleged 'winnings on races';
- (4) \$2393.61: a dividend on shares in Australian companies;
- (5) \$3569.09: refund of deposit.

The Commission now considers each of these deposits in turn.

(1) \$198,764.78: proceeds of sale of shares in Australian companies:

Scott gave evidence to the Australian Commission of the genesis of these transactions. According to him, Leary approached Scott and informed him that he (Leary) had a client in Australia who was returning to live in New Zealand and who had some funds he wanted transferred. Scott outlined to Leary that the simplest legal method of transfer in such cases was to deposit the funds with brokers and buy shares in Australia and when it was decided that the person wanted to return to New Zealand to approach the Reserve Bank in Australia for approval to transfer the funds. (T 7125)

According to Scott, Leary approved this scheme and told him the funds would be made available to Scott in Sydney. (T 7126)

Leary gave evidence to the Australian Commission that he was told by Clark at the beginning of 1979 that he (Clark) had assets in Australia which he wanted remitted to New Zealand and applied towards the cost of building a house there. Leary did not then discover the form of those assets. He learned later that the assets were shares, but informed the Commission that he did not know when these shares were acquired. (CT 9119; E 990 p6)

Leary claimed before the Australian Commission that after Clark had approached him about remitting assets from Australia to New Zealand, Leary became aware that Scott was intending to settle in Australia and to continue there the work formerly performed by him in New Zealand. Leary was questioned concerning Clark:

You did not have any suspicion at all that there must have been something funny about how he made his money in Australia?---Yes, about how he made his money in Australia.

This was in your mind in early 1979?---Yes.

Did you ever query him about it?---His illegal conduct in Australia, if it was illegal, had to have related to the period between 1976 and June 1978, when he was extradited back.

That is two and a half years?---Yes. If he had made his money dishonestly then and had then wanted to cash up his assets, build a house in New Zealand and go to Europe to get away from the scene, I did not feel that I could hold him to account for what he had done two and a half years previously, or whatever.

Except if you are going to give advice on how he could repatriate ill-gotten gains?---Sir -

If it had crossed your mind that the assets he had accumulated in Australia were as the result of illegal activity then you could have well become a party to a conspiracy?---No.

A conspiracy to remove him out of Australia?---No.

Why do you say that?---I cannot see how it could occur.

Let us make it quite clear. If you knew that the money that he had in Australia was the result of ill-gotten gains -?---No, not knew.

I am saying that if you knew that and you assisted him to remove the money out to protect him from having it confiscated, would you agree that you would become part of a total conspiracy?---If I knew, yes.

If you suspected only then you would not be troubled by the possibility that the police or somebody might assert that you knew and you would end up getting charged - wrongly, because you did not actually know - with conspiracy?---No, I did not feel I had extended myself to that extent. Let us take it stage by stage. Here was a man who in early 1979 had merely bought a \$30,000 property in the Bay of Islands. He was proposing to do some heavy building. He was proposing to liquidate assets in Australia. By sheer coincidence Scott's name came into the picture because of Boyd asking me about his domestic affairs and wanting to know how to conduct them. All I did was to suggest that if Scott is coming to Australia to run a financial business, he could assist in selling up and remit back to T.J. Doole's the money that was required for the house, and there I left it. There was no on-going day to day participation on my part that I knew he was doing it.

A lot of people have alleged it since against you, have they not?---Yes. You have been branded with an on-going participation in all this?---But the extent of it was merely an understanding that he was going to remit across \$230,000. (CT 9124-25)

The Australian Commission was not satisfied with Leary's evidence in relation to these matters and was of the opinion that he was attempting to give the impression of having a minimal knowledge of Clark's activities.

Leary was asked why he enlisted Scott's aid when there were other more conventional ways of transmitting money.

What did you think Scott was going to do - travel the Tasman with a bag of cash?---Certainly not.

What exactly? I do not know quite why you would want Scott?---Well, if Australia is the same as New Zealand, you have to go and get your banking permissions, and the like, and remit the money across, and if it is a question of holding against an exchange, hold it by all means, and if you have got to utilize share transfers or the purchase of shares, then that is a proper way of doing it.

I am still vague about this. Supposing his assets were bricks and mortar or shares, whatever you like, in Sydney, and he wanted them taken to New Zealand, obviously what you would want to do is first convert them into cash?---Right.

I assume there is no problem in taking Australian money into New Zealand permanently?---No, there is no trouble about that.

Therefore it would seem to me that he could get a bank manager at Bondi Junction or wherever to sell the property, get the cash and remit it over there?---We cannot send out \$200,000 from New Zealand just like that.

He was not sending it?---No, but you want to relate it to my state of mind back in early 1979. Here is a man who has clearly indicated that he is going to Europe, that he is selling assets in Australia and he wants to remit the money back to New Zealand. He requires somebody who is in the financial world to do just that in his absence.

But it is not the end of 1979?---I am sorry, the beginning: yes, it is.

The end of 1979?---It was the beginning of 1979.

Exactly; he is in New Zealand at the time and he wants money to build a palatial residence at this place of several names?---Yes.

No matter what form his assets in Australia are, they are capable of being translated into money and sent to New Zealand through a bank. The only problem might be legislation?---Yes.

It certainly would not be New Zealand legislation that would stop it?---No.

There would be nothing wrong in him injecting \$100,000 or whatever amount into New Zealand?---No.

The only problem would be if somebody, for example, the Australian revenue authority, says no and he cannot transfer that money to New Zealand?---There is that but there is also the fact, when selling real estate, cars, or whatever you like to name, that he is not physically there to do it because he is in Europe, so he requires somebody.

But at that stage he is not in Europe, he is going to New Zealand?---In early 1979 he was going over to Europe. As and when he was going to liquidate his assets to get his money into T.J. Doole's trust account in Auckland was of no concern to me.

It is still curious to me why you would not get somebody in Australia to do that selling up for him, whatever was appropriate, and then ask that Australian to remit it to New Zealand in conformity with Australian law. It might be \$10,000 a month or a special application all at once, whatever it may be. There seem to me to be two problems, to have somebody capable of selling and then to have somebody to get appropriate permission, if necessary, to send money to New Zealand?---There is Scott, he is in New Zealand - I knew him, I know more about him now and I am not impressed with it - and I see nothing wrong with utilising him.

That was the point, that he was in New Zealand rather than Australia?---No; as indicated in my draft here, he was going to Australia, he had had a matrimonial break-up and he was coming over here to do the same thing as what he had been doing in New Zealand.

Why not use a reputable firm of solicitors in Australia to handle these matters?---That is another way of doing it. (CT 9119-22)

The Commission is not satisfied with this explanation tendered by Leary and believes he did not engage a reputable firm of solicitors because he knew that the transactions were questionable, to say the least.

Geoffrey John Clatworthy, a member of the firm of Buttle, Wilson & Co, stockbrokers of Auckland, has provided evidence to the Commission that early in 1979, Scott was introduced to him by a client of the firm. According to Clatworthy, Scott said to him that he (Scott) had a New Zealand born personal friend and business acquaintance named Alexander Sinclair. Clatworthy stated:

I was told that Mr Sinclair had been living in Papua New Guinea and was contemplating retiring to New Zealand in a few years, that he had a reasonable sum of money in Australia and was interested in investing some of this money in Australian shares. Mr Scott inquired if these shares could at a later date be sold for New Zealand currency. I explained the position relating to the sale of Australian shares for New Zealand currency in that provided the holder was not an Australian resident and

the necessary Australian Reserve Bank approval had been obtained for the export of the share certificates the shares could be sold. They would be sold either by a New Zealand or Australian broker and the proceeds, after Australian Reserve Bank approval had been obtained, would be remitted through the banking system to New Zealand. Mr Scott said that Sinclair would most probably wish to proceed with an investment of up to A\$200,000 and could we give him an introduction to an Australian broker.
(E 1347 ppl9-20)

Clark (Sinclair) had of course not been living in Papua New Guinea and Scott knew this.

Clatworthy then stated that it was arranged that Scott be introduced to Bain & Co, stockbrokers, who were the Sydney agents for Buttle, Wilson & Co. This introduction was effected, and cash funds then and later were deposited with Bain & Co to the credit of an account styled Alexander Sinclair. Scott told the Australian Commission that these cash funds were either handed to him in Sydney by a man who has not been traced or were left for him at a Sydney hotel. The funds so deposited with Bains were applied to the purchase of shares. The shares were mainly sold in Australia by Bain & Co and the proceeds transferred to New Zealand through the ANZ Banking Group Limited on or about 14 August 1979. The sum of \$198,764.98 was received in New Zealand by Buttle Wilson and Co, stockbrokers of Auckland, and was then forwarded by them to T.J. Doole & Partners, acting for Clark. (E 1347 fol.21-2) Of that sum received by T.J. Doole & Partners, \$100,000 was placed on interest bearing deposit in the name Alexander Sinclair with the ANZ Bank at Newmarket on 17 August 1979 and the balance held in the Trust Account of T.J. Doole & Partners for A. Sinclair.

The moneys standing on interest bearing deposit were subsequently withdrawn and an amount of \$32,030.52 applied in payment of building costs for the Okiato Point property and a further amount of \$47,969.48 was paid to T.J. Doole & Partners and credited to A. Sinclair within that firm's Trust Account. The balance of the withdrawals being \$20,000 was paid to Leary who claimed that it was applied entirely by him in connection with travel and proposed travel by certain New Zealand lawyers to the United Kingdom to visit Clark after he had been apprehended there: to himself and Williams for their fares and those of Mrs E.P. Leary and for travellers cheques and fees; moneys

were also made available for Ryan for an air ticket and £1000 worth of travellers cheques. As it happened, Ryan did not travel to the United Kingdom but he applied the travellers cheques to his own use. (NZ CT 12604) Ryan's ticket was not used. Leary said there was a credit in respect of this ticket at Parnell Travel. (NZ CT 12876)

As can be seen from his evidence quoted below, Leary when giving evidence to the Australian Commission made no mention at all of providing money for Ryan to proceed to London. He spoke only of himself, his wife and Mr P.A. Williams in this regard, and until the Commission heard Ryan's evidence in New Zealand it did not know of Leary's offer to Ryan to go to England, nor of Leary providing a ticket and £1000 in travellers cheques for Ryan:

Why did you go, though, Mr Leary? What did you hope to achieve?---At the time, sir, Stevens was explicit that Mr Williams or myself or both get across there with all speed; that is an unusual request, I know, but Williams was still engaged in another case, which was going to take another couple of days, and on that basis I went first. When I got there it was clear to me that Clark had left instructions with Stevens that in the event of his being apprehended, he did want his New Zealand counsel.

But as I understand it, you have been at pains in your statement to explain that you were not on retainer from Clark, but merely acted for him from time to time, as instructions came?---Yes, sir.

Is that correct?---Yes, sir.

What did you see as your role in this particular matter?---Firstly, I did not regard a retainer as a prerequisite for going overseas for any client.

No?---Secondly there were moneys to cover this.

Would you tell us about that, please?---His moneys?

About the money, and the arrangements that were made, if any, about payment for you and/or Mr Williams, if you know about that ?---The moneys were produced by T.J. Doole's who were holding them on deposit, I think in the ANZ or Bank of New South Wales in Newmarket, and the moneys were paid into my trust account and paid out to the travel agents and the bank for travellers cheques to me, with costs, all in Sinclair's name.

What was the total sum?---Certainly about - it would be over 10,000.

Ten thousand New Zealand dollars?---Yes.

Was that for you, or for both of you?---No, my wife as well.

On what basis did she go?---I have never travelled without my wife, sir.

Did you tell this solicitor, who was it, Mr Stevens, was it?---Yes, sir.

Did you tell him that?---No, I told Clark when I got there, though, that

if he wanted me to go across at considerable inconvenience so far as

I am concerned, the client can pay for my wife as well.

All right, then; is this the situation, that there were certain moneys

being held in trust on behalf of Clark with Doole & Co or Doole &

Partners?---Yes, sir.

Did Mr Stevens tell you that?---No, I knew that, sir, because they were

holding the moneys for his house building project.

Those moneys, or a lot of those moneys came from the repatriation of

Clark's money from Australia, or the sale of shares?---Yes.

(CT 9109-11)

(2) \$11,340: a notional transfer

On 9 February, Scott purchased a bank cheque from the Australia & New Zealand Banking Group Limited, Ponsonby, Auckland for \$27,316. The bank cheque was deposited to the credit of A. Sinclair in T.J. Doole & Partners trust account. The bank cheque was purchased with \$15,976 in cash and a cheque from W.R. Robertson for \$11,340.

Scott told the Commission that Robertson was the President of the Auckland Trotting Club who had a debt to satisfy in Australia. (CT 13322) Scott said that he paid A\$10,000 of Clark's money into a Sydney bank account for Robertson and received Robertson's cheque in New Zealand written out to cash for \$11,340. (CT 13372)

Scott outlined the benefits of this 'swap'. He effected a transfer of A\$10,000 (notionally) to New Zealand for Clark and a simultaneous transfer of A\$10,000 from New Zealand to Australia for Robertson. He received a commission of five per cent from Clark and also a commission of ten per cent from Robertson (CT 13325) in respect of this notional transfer.

Scott said that he arranged a similar swap of money with Sidney Leonard Russell (CT 13399) for about A\$4000.

(3) \$18,511.83: alleged 'winnings on races'

A further amount of \$18,511.83 was deposited to the A. Sinclair account with T.J. Doole & Partners by means of a cheque for that amount drawn on the Bank of New South Wales at its branch at 262 Queen Street, Auckland. That amount was received by that bank by telegraphic transfer from the Bank of New South Wales, Sydney on 15 March 1979. The history of that transaction as told to the Australian Commission by Scott is set out in some detail in the Australian report in Part Two (f) (vi). In summary, Scott handed to Charles Quee, then a licensed bookmaker in Sydney the sum of A\$19,250 in cash which Scott had obtained from Clark. Quee then gave to Scott his cheque for A\$17,500 in favour of 'A. Sinclair' and kept the difference as his fee for this illegal transaction. Scott then lodged an application with the Reserve Bank in Australia in the name of Alexander Sinclair to transfer A\$17,500 to Sinclair's bank account at the Bank of New South Wales, Auckland. That amount was described in the application form as 'winnings on races at Canterbury 12 March 1979'. The Reserve Bank approved the transfer. The transaction was a sham, as there had in fact been no bet with Quee.

(4) \$2393.61: a dividend on shares in Australian companies

Further deposits to the credit of the A. Sinclair account with T.J. Doole & Partners represented the payment on 25 October 1979 of interest earned on the interest bearing deposit with ANZ Savings Bank at Newmarket, Auckland (\$2134.55) and payment of a dividend on Clark's shares in BHP (\$2393.61). This latter amount was transferred from Australia to New Zealand on 5 June 1979. The former amount clearly falls within term of reference (b) as the proceeds of a relevant investment.

From time to time T.J. Doole & Partners placed various portions of the funds held in its trust account for A. Sinclair on short term deposit either with banks or through T.J. Doole Nominees Limited for mortgage investments. The Commission is unable to quantify from the material available to it what proportion of the \$2522.63 interest earned on those funds represented the proceeds of transfers of money from Australia.

The Commission is satisfied from the evidence that the deposits discussed total an amount of \$234,579.31 of Clark's illegal profits transferred from Australia to his credit with T.J. Doole & Partners in Auckland. As mentioned above, at least \$2134.55 plus some unknown proportion of \$2522.63 was earned in New Zealand by way of interest from investment of these moneys.

(5) \$3569.09: refund of deposit.

Two other accounts with T J. Doole & Partners were connected with Clark. An account in the name of Maria Muhary was credited with an amount of \$10,000 and with a refund from Yorkstar Motors Pty Limited ('Yorkstar') in the sum of \$3569.09. The origin of the latter sum of money is that on 11 May 1979 Allison Dine using the name Maria Muhary ordered from Yorkstar of William Street, Sydney a Mercedes 450 SEL automatic saloon for delivery in Germany. An export deposit of A\$3169 (representing German sales tax of 12 per cent of the purchase price) was paid. Scott gave evidence to the Commission that he accompanied Dine on that occasion, and that he had obtained that sum of money from Shepherd in cash. (CT 2473) On 19 September 1979 the deposit was refunded as \$3569.09 by transfer by Yorkstar through the banking system to the T.J. Doole & Partners trust account. The deposit of \$10,000 was a transfer from the A. Sinclair account. An amount of \$11,513.13 was paid from the Maria Muhary account to her plus an amount of \$1727.24 as the cost of repairs to her motor vehicle. The residue was used to pay legal costs on her behalf.

An account in the name of Charles David Goldfinch was established in the T.J. Doole & Partners trust account with the apparent sole purpose of receiving on behalf of Clark the proceeds of sale of a house belonging to Patrick Norton-Bennett. An amount of \$26,115.60 was credited to this account. The transaction concerning the sale of the house is described in greater detail at pages 84 and 85.

Total deposits for the benefit of Clark (and Muhary) with T.J. Doole & Partners amounted to \$491,567.77. From that amount, the sum of \$412,850.46 was withdrawn and applied to purchase a property for Clark at Okiato Point, Russell, Bay of Islands and towards improvements made to the property. The Commission at page 80 and following considers in greater detail the evidence before it about this property.

Clark also had a cheque account styled Alexander Sinclair at the Bank of New South Wales, 262 Queen Street, Auckland. This account was opened on 22 February 1979. Deposits totalling \$50,633.61 were made from funds in the Sinclair account with T.J. Doole & Partners and have already been discussed. \$8953.85 was returned from the Bank of New South Wales account to the T.J. Doole & Partners account on 5 July 1979.

The following are known or possible transfers of moneys from Australia to New Zealand disclosed by the evidence:

- (a) A confidential witness before the Commission said that Wayne Shrimpton in late 1977 delivered an amount of \$30,000 in cash to Mr Peter Aldridge Williams a lawyer practising in Auckland to handle charges against Clark for importing heroin into New Zealand. Shrimpton was associated with Clark in drug trafficking activities.
- (b) Another confidential witness before the Commission said that Allison Dine used to take money to New Zealand when she returned there from time to time. According to that witness, on one occasion Dine spoke of taking money to New Zealand to help with one of the court cases in which a syndicate member was involved. (NZ CT 12745-46)
- (c) A further confidential witness before the Commission said that Douglas Wilson would sometimes take money from Australia to New Zealand, and it was thought that Christopher Martin Johnstone and Peter Fulcher also took money into New Zealand. (NZ CT 12790-91)
- (d) During 1979 Robert Scott carried money belonging to Clark from Australia to New Zealand. This was done on an unknown number of occasions, and an amount of approximately A\$10,000 was carried each time. Scott also effected money transfers by purchasing video equipment in Australia and then selling it in New Zealand.
- (e) Neil Cedric Stenbeck gave evidence to the Commission in New Zealand that he is a consulting engineer and that his services were retained to provide structural calculations for the house then being built for Clark at Okiato Point. (NZ E 17) According to Stenbeck, while he was engaged on the Okiato Point project J.M. Leary handed to him a cheque which Stenbeck intended

to cash. Stenbeck asked J.M. Leary how safe it was to accept that cheque. J.M. Leary assured him that it was quite safe, that he (J.M. Leary) had brought the money to New Zealand in a suitcase. According to Stenbeck, J.M. Leary went on to say that that money so brought to New Zealand was being deposited in a solicitor's trust account; that J.M. Leary would complete the cheque butt so that the client would know the destination of the money; and that when the job was completed they were going to destroy all the documentation. Stenbeck told the Commission that in the period during which he was working on the project J.M. Leary went to Australia and returned again. Stenbeck thought that that occurred in March or April of 1979. (NZ CT 12561-62)

J.M. Leary told the Commission that 'a few weeks after Easter 1979' he travelled alone to Australia to there meet Clark and his wife to look at building materials for the Okiato Point house. Clark paid all expenses. He met Clark's wife at the Wentworth Hotel, Sydney, and met Clark himself at the Hyatt Hotel. (NZ T 12646-47) The further evidence of J.M. Leary is that he returned to New Zealand carrying a suitcase but that that suitcase did not contain any money and that he has never carried money into New Zealand in a suitcase. (NZ T 12651) He described as 'quite untrue' the allegation that he had brought money into New Zealand in a suitcase probably in March or April 1979. He said that he did not recall anything like the giving of that explanation to Stenbeck when the validity or worth of a cash cheque was raised. He was further examined as follows:

We have been told by one of your staff, one of the men employed by you, that you told him that you had brought the money into New Zealand in a suitcase and it was being deposited in a solicitor's trust fund?---That is a lie.

The moneys to pay for the house did in fact come from a solicitor's trust account?---Yes.

So that in that regard this person would be correct?---Yes.

It was paid into that solicitor's trust fund by whom?---... I do not know whoever paid (it) into the trust fund. I would not know.

Did you tell us that you have no idea where the moneys originated from that came from the Doole trust account?---No idea.

Although you were present at the meeting at which your brother and a solicitor from Doole's office (were) present?---Yes.

And you can offer no explanation as to how this employee knew that the money was being deposited in the solicitor's trust fund?---(I) cannot offer any explanation. Sinclair told me he would be leaving \$250,000 for the purpose of building and (that he would) leave it with T.J. Doole.

When did he tell you that?---Just before leaving.

When?---Just before Easter 1979.

I want to come back to what I have told you that employee told us. As I have indicated to you, he has told us that the money was deposited in a solicitor's trust fund. Where would he have got that information?---Made it up.

Very accurate isn't he?---If you go to Customs you will find the suitcase I brought back was searched thoroughly and if any money was in it it would have been found.

We have other evidence ... of moneys being moved in suitcases?---Not by me.

Did Sinclair discuss or mention to you the possibility of money being moved by you in that way?---No. (NZ CT 12651-52)

The Commission is satisfied that Stenbeck had not, as J.M. Leary claimed, 'made it up' and accepts Stenbeck as a witness of truth with no reason to give false evidence.

Christopher Martin Johnstone was an associate of Clark in New Zealand and by 1976 he had established companies carrying on apparently lawful business in Singapore. One company which he controlled was Cross & Mercer (Singapore) Pte Ltd. There was also established in Australia an associated company styled Cross & Mercer (Australia) Pty Ltd. There were transactions and transfers of money between the Australian company and the Singapore companies. These matters are dealt with in Part Two (f)(viii) of the Australian report. The Commission has received evidence that C.M. Johnstone who was heavily involved with Clark in drug trafficking caused the transfer of sums of money to New Zealand. Although on their face these transfers originated in Singapore it is probable that at least part of the money was the proceeds of illegal activities in Australia. Although it cannot be positively stated that these transfers fell within the terms of the Warrant, the Commission now sets out the evidence relating to them.

There is evidence before the Commission that Mr B.A. Johnstone brought to the home he then shared with Mrs M.A. Johnstone in New Zealand a Singapore Airlines bag containing cash, and that the indications were that that cash amounted to \$88,500. The money was kept at the Johnstone home, and part of it was applied to the purchase of an 'E' type Jaguar motor vehicle for \$15,000, a Sunbeam motor vehicle for \$6000 and antique furniture for \$1400. Some of that money was also expended in the repair of the yacht Brigadoon. According to Mrs Johnstone, she also deposited about \$50,000 of the money to the credit of accounts in various banks in Orewa, New Zealand during 1977. The evidence of B.A and M.A Johnstone (Christopher Martin Johnstone's parents) is dealt with in Part Two (f)(viii) of the Australian report.

Mrs Johnstone told the New Zealand Commission that by December 1978 she suspected that the large sums of money that had come to her and her husband were 'drug money'. She was asked about a visit she made to Sydney in December 1978 to spend Christmas with Martin Johnstone and Stephen Johnstone at Stephen's Sydney home. On that occasion she discussed various property matters with Martin. The following is taken from her evidence:

He had given you help to the tune of NZ\$120,000?---Yes.

At that stage in Sydney that December, weren't you by this time a bit curious as to the source of this large sum of money?---No.

Why not?---I didn't talk about it to people.

You are talking about a large sum of money that has come to you over a relatively short period?---I obviously knew there was something wrong with it, I never pretended to the other chaps (the Commission investigators) I thought it was good money but I never asked where it had come from.

You must have spoken to Martin and voiced your suspicions to him in Sydney?---No, he wouldn't have wanted me to.

Did you suspect it was drugs money?---At this stage in December 1978, yes.

Mrs Johnstone told the Commission that she had sent newspaper clippings from The Auckland Star article about 'Mr Asia' in August 1978 to Stephen in Sydney. Despite the fact that she 'just knew' that the article referred to Martin, she claimed that she did not discuss her conclusions with anyone before Martin's murder. (NZ CT 12515-17)

Mr B.A. Johnstone told the New Zealand Commission that he had been told by Martin Johnstone that the cash that he received from Martin and from George Papaconstantinou came largely from the sale of real estate in New Zealand. (NZ CT 12538-39) Johnstone said that he had asked Martin where the capital for his real estate enterprises had come from and had been told by Martin that he had been financed and assisted by solicitor John Murfitt. (NZ CT 12539)

Stephen Brian Johnstone told the Australian Commission that Martin Johnstone had money in New Zealand in large amounts '... he always seemed to have money around him' and that both he (Stephen) and his parents were led to believe they money provided by Martin in New Zealand had come from money deals that Martin did in cash. (CT 9433)

He told the Commission of Martin Johnstone coming to a Takapuna hotel where he (Stephen) was staying:

Martin arrived in a utility and pulled out a suitcase which he said contained money. He gave this to my father, who took it anyway and put it underneath the shop. (CT 9441) Martin did not open it up. He just said to my father, can you put this, look after this for me - right - what I will get you to do is to invest this money in some property for me while I am away overseas, and he was also to use this money, from what I understood, to make restorations to the Brigadoon which had been towed back from Whangerai ... (CT 9442)

Stephen Johnstone told the Commission what happened to the suitcase:

It was George Papaconstantinou who was the chap who picked up that suitcase full of money, and we do not know where it went but supposedly, from what we could gather the money belonged to Martin and George and ... was given to them (Mr and Mrs Johnstone) by Martin to use on his behalf to buy assets for him in New Zealand. (CT 9442) The suitcase was so heavy it was almost impossible to budge it off the ground. (CT 9443)

George Papaconstantinou gave evidence before the Commission. The Commission was quite unimpressed with him as a witness and is of the view that when he said anything at all to the Commission it was what he believed was in his own best interests, without any regard to the truth.

Papaconstantinou told the Commission that the only time that he may have picked up a suitcase from Mr Johnstone was when he sold his shop and Papaconstantinou was asked by Martin Johnstone 'to take his things away and they could have been one, maybe two or three suitcases with his things. His things were crockery and old bits and pieces you may find in a flat. It was quite heavy with crockery'. (NZ CT 12698)

In October 1977 Johnstone's parents purchased three ten-acre lots of land at Paremoremo for the sum of \$120,000. Mrs Johnstone gave evidence to the Commission that the money for this property was given to her and her former husband to acquire assets on behalf of their son. The assets were to be put in their own names with the intention of returning the assets to their son in the future.

Johnstone's father acknowledged before the Commission that he received \$28,000 from his son to invest in land at Paremoremo. According to him, that property cost \$140,000 and the purchase was financed with the amount of \$28,000 received from his son through Murfitt, then practising as a solicitor in Auckland, \$15,000 from Johnstone's father's current bank account with the Bank of New Zealand, Devonport, an advance of an unspecified amount by way of first mortgage from the vendor of the property and a further \$40,000 from the Bank of New Zealand, Devonport by way of second mortgage. Again, while in all likelihood the amounts supplied by Johnstone towards the purchase of the Paremoremo property were the proceeds of drug trafficking, there is no evidence before the Commission that that amount was transferred to New Zealand from Australia.

- (ii) Terms of reference (b), (c) and (d): Assistance rendered to Terrence John Clark by the provision of banking, financial, legal or other services by any person connected with New Zealand in respect of any relevant transfer of money or investment thereof

Banking services within the ordinary banking system were provided for Clark and those acting on his behalf. However there is no evidence that these banking services were provided otherwise than in good faith and in the ordinary course of banking business, and the Commission does not propose to say more about those services.

Clearly, financial and legal services were also provided to Clark in New Zealand. As has been seen, financial services were provided by the stockbrokers, Buttle Wilson & Co. and, in respect of those services, the Commission accepts that such services were provided in good faith and in the ordinary course of business. Financial services were also provided by Scott and these have been sufficiently detailed in the preceding section of this Part.

Legal services were provided to Clark by the following:

- . T.J. Doole & Partners
- . E.P. Leary
- . P.A. Williams
- . K. Ryan
- . K.M.M. Soich

The Commission here proposes to examine the evidence pertaining to the legal services rendered with a view to ascertaining the nature of those services.

T.J. Doole & Partners

The services provided by T.J. Doole & Partners consisted principally of making available its trust account facility to receive and disburse the funds remitted from Australia. The disbursements included the placement of part of the funds on short term investments: see, for example, the interest payment referred to on page 43.

Some details of the way in which that trust account facility was used appear in the preceding section of this report. Other details appear later in this section. In summary, moneys transferred from Australia were deposited to the credit of the Alexander Sinclair account with T.J. Doole & Partners and were with other moneys standing to the credit of that account from time to time applied towards Clark's Okiato Point property or towards some other purpose for Clark's benefit.

Moneys to be applied towards improvements to the Okiato Point property were withdrawn from the trust account and deposited to a bank account styled J.M. Leary Building Account. The proprietor of that latter account was E.P. Leary's brother, who described himself as an architect and was in charge of building work upon the property.

A withdrawal from the A. Sinclair account with T.J. Doole & Partners supposedly for the benefit of Clark was made when Leary purporting to act as attorney for Clark withdrew \$20,000 from the account and applied it to the costs and expenses of the trip made by Leary and others to England to visit Clark.

The evidence before the Commission is that Boyd was primarily responsible for the management of the affairs of Clark which were handled by the firm and in particular with the management of the trust account moneys deposited on behalf of Clark. The Commission has, in the Australian report, expressed certain views as to Boyd's state of knowledge concerning Clark's criminal activities. Since then the Commission has given further consideration to this aspect in the light of the whole of the relevant evidence. As a result the Commission is of the view that Boyd was aware that Clark's money had come from no legitimate source. However it should not be overlooked that Doole was the senior partner in the firm and if the Law Society sees fit to conduct an inquiry into the conduct of the firm's trust account, his responsibility in relation thereto should not be ignored. The Commission is also concerned with the conduct of the firm's nominee company. For example the circumstances under which Leary was lent mortgage money which emanated from Schnellinger deserves thorough investigation. In addition the Commission is concerned with the circumstances and propriety of Boyd providing a letter to Credit Suisse, Singapore assuring the manager there that his firm acted for Mr R.A. Gorrie (one of Clark's aliases) and that Mr Gorrie's assets exceeded \$1 million. The circumstances of the transfer of the property from Norton-Bennett to Goldfinch

are in the view of the Commission, suspicious and should have been further questioned by Boyd. The Commission is of the view that Boyd's journey to Australia in order to escort Maria Muhary to New Zealand is hardly the work of a solicitor. The Commission is of the view that the Law Society should conduct a full inquiry into the affairs of the firm which should include an inquiry into the above matters.

E.P. Leary

Legal services provided by Leary for Clark, so far as relevant, comprised the following:

(1) In 1975 a charge against Clark of possession of cannabis:

Leary told the Australian Commission that he acted for Clark in early 1975 when he was charged with possession of cannabis for the purpose of supply. The charge was defended in the Whangarei District Court in or about May 1975 when Clark was convicted. He appealed against conviction, and the appeal was heard at Auckland in July 1975 and was successful. Leary informed the Australian Commission that during the course of his appearing for Clark he discovered that Clark already had a criminal record and had spent some time in prison. Leary recalled that Clark had been in gaol for receiving and for burglary. (CT 9098-99; E 990 p9) Leary declined to make available to the Commission a copy of his file and other records concerning this matter on the ground that he had been specifically instructed by Messrs Baldwin, Mellor & Co, solicitors of London who act for Clark, that privilege was claimed. (E 990 p9)

(2) In 1975 a charge against Clark of smoking cannabis:

Leary also gave evidence to the Australian Commission that he appeared for Clark in the middle of 1975 when Clark and others were charged with smoking cannabis. Clark was acquitted. (E 990 p9; CT 9099-100)

(3) A charge of importing heroin preferred against Clark in October 1975:

Leary informed the Australian Commission that in or about October 1975 Clark and Raymond Brunnell were arrested on a charge of importing heroin. Leary stated that he appeared for them both initially upon the hearing of

applications for bail and for the fixing of a date for the preliminary hearing of their charges. According to Leary, a considerable amount of preparatory work was done by him on behalf of both Clark and Brunnell.

Leary stated in connection with these charges that he later instructed Ryan to act for Brunnell, that Ryan subsequently took over the entire conduct of the defence of Brunnell and that Brunnell made arrangements about fees direct with Ryan's office. Ryan was informed before the New Zealand Commission of Leary's evidence about this arrangement concerning fees. Ryan responded that Brunnell had told him that Clark had deposited money in Leary's office for Brunnell; that he (Ryan) had asked Leary to pay to him this money; and that it was not until Clark had absconded from New Zealand that Leary denied that Clark had so paid money to him. (NZ CT 12613-14).

Leary also stated that he instructed Williams to appear for Clark. (CT 9101; E 990 pp8-9)

It should here be noted that Brunnell was subsequently acquitted of the charge of importing heroin and that Clark absconded from bail in early 1976 and fled New Zealand. On 9 June 1978 he was arrested in Brisbane and later that month extradited to New Zealand. In October 1978 he stood trial on the charge of importing heroin, and was acquitted. At the trial, Clark was represented by Williams and Ryan. According to Leary, originally he was to appear as Junior Counsel for Clark, but did not so appear when it was decided that he should give evidence for the defence about an alleged telephone conversation which he received in New Zealand from Clark in Australia prior to June 1978 during which Clark said that he wished to voluntarily return to New Zealand to face the charge. (CT 9101; E 990 p8)

(4) In November 1978 a change of name by deed poll:

Leary stated that in or about November 1978 Clark wished to change his name by deed poll and instructed Leary to prepare the necessary documents. According to Leary, Clark was undecided as to what name he wished to use and for a time he said that he wanted to use the name Hemmings. Eventually Leary received instructions that the name Clark had decided upon was Alexander Sinclair. (CT 9104; E 990 p8)

(5) The property at Okiato Point, Russell, in the Bay of Islands:

Leary stated that about the same time that Clark changed his name by deed poll, he said that he was interested in purchasing a leasehold property in Russell for about \$30,000. According to Leary, at about that time or in early 1979 he referred Clark to Messrs T.J. Doole & Partners, solicitors of Parnell. Leary gave the Australian Commission as his reason for that referral that Clark's affairs seemed at that point to be more of a general nature requiring a 'day to day' solicitor. (E 990 p8)

Leary said that shortly before the Christmas of 1978 Clark desired to renovate the existing house on the property at Okiato Point and required an architect at short notice. Leary suggested his own brother John Milne Leary who was then resident in the Rotorua area.

Leary also told the Commission that at that stage he understood Clark was realising assets in Brisbane in order to pay for the Okiato Point property purchase 'and all matters incidental including my outstanding fees'. (E 990 p8)

(6) Journey to the United Kingdom to confer with Clark and others:

Leary told the Australian Commission that on the instructions of Messrs Baldwin, Mellor & Co, solicitors of London, he travelled to the United Kingdom in late October/early November 1979 and saw Clark. According to Leary, a series of telephone calls was received by him and by Williams from Mr Stevens of Baldwin, Mellor & Co. Leary said that from those conversations he understood that Clark faced 'very grave but unspecified criminal charges'. (E 990 p8) Leary said:

The general picture he gave me was that a group of people had been taken by the Flying Squad in London which included Clark, and they had all been taken to Chorley; he could not get any sense out of the Chorley CIB as to what they had been taken in for, or what they were being charged with. (CT 9108)

Leary told the Australian Commission that Stevens was explicit that Leary and Williams both proceed to England with all speed. According to him, the fact that he did not have a retainer from Clark to act for him was not a prerequisite for going to England for Clark, and there were moneys held by T.J. Doole & Partners which were paid into Leary's trust account and paid out to travel agents and the bank for travellers cheques to Leary, with costs. At that stage, Leary informed the Commission that the total sum so paid into his trust account 'would be over' \$10,000. Leary would not travel without his wife, and according to him although he did not so inform Stevens during the telephone conversations he informed Clark when he (Leary) saw him in England that Clark could pay for Leary's wife as well. (CT 9109)

Leary told the Australian Commission that he saw Clark at the Chorley Police Station on the day following Leary's arrival in England. (CT 9110)

Leary provided to the Australian Commission his account of his interviews with Clark. According to that account, the first interview was in the presence of senior police officers from whom Leary ascertained that Clark was facing very serious allegations, including murder and drug conspiracy. Leary recounted to the Australian Commission that Clark informed him of his feeling that there was no basis for the allegations. Clark's principal concern at the first interview with Leary was with his (Clark's) personal welfare and desire for some clothing. According to Leary, Clark wanted him to see Soich and Hinckman, both of whom Leary saw. Leary had a further discussion with a police officer whom Leary thinks was Chief Superintendent Rimmer. Williams then arrived and a conference was held between Clark, Williams and Leary.

At that conference a number of matters were raised. They included the possible problems Clark may encounter with the New Zealand Inland Revenue Department, progress in building work then being performed upon the Okiato Point property and the provision to Leary of instructions by Clark as to how to tidy up Clark's affairs in New Zealand including such matters as the disposal of a motor vehicle and the payment of maintenance to his de facto wife. According to Leary, he estimated to Clark that legal fees for litigation against the New Zealand Inland Revenue Department would be about \$10,000.

Leary told the Australian Commission that the upshot of that conversation with Clark was, that in order to secure £10,000 which Clark said was deposited with Credit Suisse in Bishopsgate, Leary was given power of attorney for that specific purpose together with authority to Credit Suisse to pay Leary the £10,000. That power of attorney was signed by Clark using the name Gorrie. Baldwin, Mellor & Co assisted in the appointment of Leary as Clark's attorney. (CT 9112-13)

Following his return to New Zealand after conferring with Clark in England, Leary wrote to him by letter bearing date 19 December 1979, a copy of which the Commission obtained. The letter dealt in considerable detail with action taken against Clark's New Zealand property by the Inland Revenue Department; with the Fiji land; with the Waihi property (dealt with in some detail at pages 84 and 85 of this report); with the welfare of Clark's de facto wife and his children; with the sale of a Range Rover motor vehicle; and with legal fees. In connection with the latter aspect, Leary recommended to Clark that in view of the action of the Inland Revenue Department against Clark's property in New Zealand, 'offshore moneys' should be used in preference to funds arranged in New Zealand. (E 992 p1) Leary was asked what made him think that Clark had offshore moneys. He replied:

---When I used the term offshore, I am talking about any money held other than in New Zealand.

Yes, but the reference that you make there seems predicated on the basis that there is some such money?---Yes.

Does it not?---Yes.

I mean, the writer of that obviously believes that there is some such money that is not in New Zealand?---Well, firstly, he had an account at Credit Suisse. I knew that.

Bishopsgate in London?---Yes.

Any other matters that you had in mind?---No, no others.

That is all you had in mind?---Yes.

I tender that, if your Honour pleases.

THE WITNESS: Well if he had money in Australia he would have to use that. (CT 9114)

(7) Sale of 'Romadiuk' motor vehicle:

The letter written by Leary to Clark following Leary's return to New Zealand referred to in the preceding paragraph also makes mention of Jan Romadiuk selling 'the Range Rover'. (E 992 p2) Leary gave evidence to the Australian Commission that in 1979 Clark had purchased a Range Rover vehicle and that when Leary saw Clark in England later in 1979 Clark gave him instructions to sell the vehicle. According to Leary, Clark told him that the vehicle was registered in the name of Romadiuk. The account of the matter as given by Leary continued:

I came back (to New Zealand) and gave instructions to the car dealers to sell it. They had possession of it, and I understood they had all the ownership papers. It was sold. The proceeds, \$20,000, were paid to my trust account and receipted in that alias name that he had been using, but it was cross-referenced as being in the matter of Sinclair. Those moneys were disbursed according to Sinclair's instructions on his house, on engineers' costs, architectural costs, costs for myself, and the upshot was that the New Zealand Law Society auditor was unhappy about it because he believed that Romadiuk might exist as a separate person. He did not. I was criminally charged by the Auckland Police with a variety of offences of dishonesty. (CT 9094)

According to Leary, the allegations against him included that he had forged the documents relating to the authorisation of sale. Leary told the Australian Commission that at a preliminary hearing he was committed to stand trial on three of the charges but that a superior court later ruled that the evidence against him did not disclose any charge and the charges were quashed. (CT 9094)

In connection with the sale of the Romadiuk vehicle, the Commission also obtained a copy of a letter dated 23 April 1981 which Leary wrote to Messrs Baldwin, Mellor & Co. This letter included the following:

'I would be obliged if you would place this letter or a copy with Mr Sinclair ...

There was a Range Rover sold on his instructions at the end of 1979 consequent upon arrest and my visitation to the United Kingdom.

It was registered in the name of a person called Jan Romadeck of 78 Albany Road, Herne Bay occupation - engineer.

I require as much detailed information as possible about this person and why it was decided by Mr Sinclair to use the gentleman's name as the registered owner.

...

In giving these details please make it perfectly clear that Mr Sinclair was at all times the real owner of the vehicle and entitled to the proceeds of sale.' (CE 991)

At one point in his evidence to the Australian Commission Leary answered a question whether he signed any documents relating to the transfer of ownership of the motor vehicle by saying that the documents that he signed in December 1979 on his return from England were in the name of Romadiuk per himself as duly authorised agent for Sinclair, 'who was using yet another alias that we had found out about'. (CT 9095) At a later point in his evidence, Leary was asked when he first became aware that the man Romadiuk did not in fact exist, and he answered that in November 1979 he was given that name as being an alias that Sinclair had used for his vehicle and that he (Leary) did not believe any such person existed. According to Leary, when the New Zealand Law Society approached him in early 1981 concerning the existence of the person Romadiuk, Leary caused certain inquiries to be made as a result of which the widow of the late Jan Hromadek telephoned him and Leary established 'very quickly' that her late husband 'was never in a position to own a \$20,000 motor vehicle'. Leary told the Australian Commission that the inquiries also revealed that Hromadek was a criminal who had been in gaol but that he (Leary) did not know whether Clark knew him but that there seemed to be 'a very curious coincidence there'. (CT 9104)

Before the Australian Commission, Leary said that the statement in his letter to Clark of 1979 concerning Romadiuk that 'he is selling the Range Rover at the best possible figure before the Tax Department freezes the proceeds of sale' was 'probably a poor piece of humour' on the part of Leary. (CT 9114) Leary agreed that a person who read that portion of the letter and who had no knowledge of the alleged circumstance that Clark had used the alias Romadiuk would think that Romadiuk was a person other than Clark and that there was to be a sale by that person. (CT 9114-15)

There was before the Commission no other evidence which clearly pointed to a greater involvement by Leary with activities of the kind indicated by the terms of reference. However, the Commission is not satisfied that there has been disclosed to it by Leary the full extent of his connection with Clark. One matter which gives rise to the Commission's view that in all likelihood Leary provided other services for Clark is the amount and manner of payment or collection of fees charged by Leary in matters relating to Clark.

Leary provided the Australian Commission with details of what he said were payments made by or on behalf of Clark as shown by Leary's records for work done by him for Clark. Leary refused to make available his trust account records. Leary's evidence to the Australian Commission concerning such payments was to the following effect:

- (1) In 1975 Leary received from or on behalf of Clark or for the credit of Clark a total amount of \$3671.78 for acting in the Whangarei prosecution.
- (2) In December 1978 Leary received \$100 as his fees for acting for Clark when he changed his name by deed poll to Sinclair.
- (3) In May 1979 Leary received a total amount of \$20,000 which he said was a late payment of fees for acting for the defence of Clark and Brunnell on the charges of heroin importation. Of that amount, \$6000 was for acting for Brunnell and \$14,000 was for acting for Clark. That total amount was paid in cash and was delivered to Leary's office by, he thought, Stephen Muhary. (CT 9116)

Leary gave evidence to the Australian Commission that it was understood that Clark would pay his own legal costs and those of Brunnell. According to Leary, Clark assured him that 'when matters had been tidied up' Clark would attend to payment.

---I was in one of those unpleasant situations where you have done a great deal of work, years ago in fact, and you had not been paid and you are locked in and eventually you hope you would be paid.

You would not get paid at all if you did not continue?---That is right. (CT 9103)

Leary also stated that he understood at the time of the 1978 trial of Clark in New Zealand that Mr J.M. Robertson, a solicitor in Brisbane, was holding moneys on behalf of Clark and that Robertson would be realising Clark's assets in Brisbane in order to meet Clark's commitment to Leary.

Clark told you that?---Yes.

Those were his words, that he was realising his assets in Brisbane?---Yes.

Did you ask him what assets he had in Brisbane?---No, I did not. (CT 9103)

Leary was originally to appear as Junior Counsel for Clark at his trial in 1978, but did not do so when it was decided that he would be called to give evidence for the defence. (E 990 p8)

- (4) In November 1979 Leary received the sum of \$10,800 (£5000) from Credit Suisse, London for litigation with the New Zealand Inland Revenue Department. According to Leary, that amount was one half of the sum of £10,000 which he had uplifted from the Bishopsgate branch of Credit Suisse and the remaining half was expended by him paying one half thereof to Baldwin, Mellor & Co and expending the balance on expenses incurred in England on such items as airfares and other costs of transport within England, hotel accommodation and clothing. (CT 9117)
- (5) In November/December 1979 Leary received the sum of \$7200 which Leary described as being the amount of fees for the period involving the Okiato Point property, including having to go 'to the North' on three occasions in connection with building disputes and attending upon his brother J.M. Leary on numerous occasions.

The Commission was not told by Leary what work he performed to justify the payment of \$14,000 in relation to the heroin importation charge. As has been mentioned he did not appear as counsel or solicitor at the trial, but gave evidence on Clark's behalf. The fee of \$14,000 for the work Leary said he did for Clark in this matter is in the opinion of the Commission exorbitant according to any reasonable scale and gives rise to suspicion as to the basis upon which the amount was paid. The above comment also applies to the \$6000 paid by Clark on behalf of Brunnell.

Leary was also called to give evidence before the New Zealand Commission. He then provided further details of the fees paid him in November/December 1979. According to him, \$20,000 was received by him from the trust account of T.J. Doole & Partners, and was deposited by him to his trust account to the credit of A. Sinclair. There was already a credit to that account of \$754.20. From the total amount thus standing to the credit of Sinclair in Leary's trust account, the following deductions were made:

- (a) return air tickets to England \$10,995;
- (b) travellers cheques to a total of \$6311.18;
- (c) fees to Leary of \$3400.

Leary informed the New Zealand Commission that the figure of \$7200 given by him to the Australian Commission as the amount of his fees in November/December 1979 was given in error, and that the correct figure was \$7400. He also informed the New Zealand Commission that that figure was the amount of his fees for acting in connection with the Okiato Point property from February 1979 to November/December of the same year. That amount of fees was paid from the \$20,000 held in trust by him as previously described, and from a further amount of \$20,000 also held by him in trust for Clark being the proceeds of the sale of the Romadiuk vehicle. \$3400 was taken from the first mentioned amount, and \$4000 from the later amount. (NZ CT 12866; CE 1344)

Thus, in respect of the matters referred to above in which Leary acted for Clark, it emerges that:

- (a) A substantial proportion of moneys expended on the purchase and improvement of the Okiato Point property came from the moneys transferred from Australia to New Zealand in connection with the sale of shares. E.P. Leary's involvement with the Okiato Point property appears to have been that he approached Scott about the means by which money could be legally transferred from Australia to New Zealand, that he attended to certain aspects of the setting up of a system whereby payments were to be made in respect of the property and that he arranged for his brother to be engaged as architect on the project. This aspect is further examined later in this report.

- (b) The costs and expenses of the visit to Clark in the United Kingdom by Leary and others were paid out of portion of the proceeds the moneys transferred from Australia to New Zealand in connection with the sale of the shares and which had been deposited in the T.J. Doole & Partners trust account.

The Commission is of the view that Leary had an intimate knowledge of Clark's affairs but was not prepared to disclose to the Commission the full extent of this knowledge. He was evasive and devious whilst giving evidence before the Commission both in Australia and New Zealand. The circumstances of Leary's journey to the United Kingdom with his wife to see Clark and the services he performed there are deserving of further investigation. The Commission was not told by Leary what work he performed to justify the payment of \$14,000 in relation to the heroin importation charge against Clark nor in relation to the \$6000 Clark paid him for Brunnell. As has been mentioned he did not appear as counsel or solicitor at Clark's trial but gave evidence on Clark's behalf. He appeared at neither of Brunnell's trials. In the opinion of his colleague Ryan, Leary did not do any work for Clark or Brunnell. Ryan said, 'I did the trials and he gets paid for it'. Ryan said he could see no justification for Leary being paid this money. The receipt by Leary of this \$20,000 gives rise to suspicion concerning the basis upon which that and other amounts were charged and paid. That suspicion is deepened when regard is paid to Leary's evidence that he knew as early as 1975 that Clark was a criminal and that in early 1979 was himself suspicious that there was 'something funny' about how Clark had made his money in Australia in previous years. Notwithstanding his knowledge of those matters, he continued to provide advice and services which enabled some of Clark's money in Australia to be transferred to New Zealand. In the view of the Commission the Law Society should examine Leary's behaviour in relation to at least the following matters:

- (i) The whole of the circumstances surrounding the acceptance of \$20,000 in fees for the work he said he did for Clark and Brunnell.

- (ii) The whole of the circumstances surrounding Leary's journey to the United Kingdom including the manner in which \$20,000 was withdrawn from the trust account of T.J. Doole & Partners to pay expenses incurred by those who went or were expected to go.

- (iii) His relationship with Scott including his engaging Scott on Clark's behalf in relation to transferring some of Clark's money to New Zealand.

- (iv) His behaviour in relation to the handling of the 'Romadiuk' matter. The Commission is aware that Leary was charged in relation to this matter but was not committed for trial. It may be that the Commission has more material than was available at the time Leary was charged. In any event the Commission believes that the Law Society should examine this matter from an ethical point of view, in particular Leary's handling of his trust account in relation thereto.

- (v) The whole of the circumstances of Leary obtaining mortgage money from the T.J. Doole & Partners nominee company, T.J. Doole Nominees Limited, which emanated from the drug criminal Schnellinger.

- (vi) The circumstances surrounding Leary's involvement concerning the building of the Okiato Point property and related matters including the basis upon which he received fees regarding these matters. Attention should be paid to Leary's method of appropriating fees to himself from the moneys of his client Clark without apparently rendering any bill of costs, and to his use of the power of attorney granted to him by Clark in relation to the disposition of Clark's money which was deposited in the T.J. Doole & Partners trust account.

- (vii) Any other matter in the Commission's report which the Law Society considers to be relevant concerning the propriety of Leary's behaviour.

P.A. Williams

The matters in which according to his evidence to the New Zealand Commission Williams acted for Clark were substantially that he appeared for Clark upon the charge of importing heroin and that he travelled to the United Kingdom towards the end of 1979 to confer with Clark and others.

As with Leary, there was before the Commission no other evidence which clearly pointed to a greater involvement by Williams with the activities of the kind indicated by the terms of reference. However, also as with Leary, the amount and manner of payment and collection of fees charged by Williams in matters relating to Clark are elements which with others cause the Commission to doubt that there has been disclosed to it by Williams the full extent of his relevant connection with Clark.

Evidence before the Commission indicates that Williams received directly or indirectly from Clark:

\$30,000 in August 1978;

\$30,000 in March 1979;

\$30,000 also in March 1979;

\$5000 (approximately) as a gift in October 1978 which was paid to Hoods, Australia towards the purchase of sails for a yacht owned by Williams which he was then intending to sail in the Sydney to Hobart yacht race; and a motor vehicle valued at \$10,000 in November 1978.

The Commission received detailed evidence as to the manner in which the payment of \$30,000 in August 1978 was received and applied by Williams. Mr J.M. Robertson, a solicitor carrying on practice in Brisbane appeared for Clark at the hearing in Brisbane in June 1978 of the charges against him and at the extradition proceedings. He also acted for Clark in connection with the sale of a Jaguar motor vehicle which Clark owned in Australia. Clark admitted that he had no lawful source of income in Australia and the evidence before the Commission is that his only source of income was from the sale of

drugs. It is clear that this motor vehicle was purchased with the proceeds of drug trafficking. Soich attended upon Robertson in Brisbane and received from him the sum of A\$27,000 (\$30,000) being the proceeds of sale of the vehicle less costs. She then deposited these funds to the credit of an account in the name of Williams at the Commonwealth Savings Bank of Australia, Sydney. From this account, approximately A\$20,000 was placed with Segal and Stern, solicitors of Bondi Junction, Sydney, for the purpose of mortgage investment.

Williams was asked before the New Zealand Commission to provide his version of the manner of payment of this \$30,000 for his benefit, and he described to the Commission the manner in which this amount was paid and the manner in which it was applied by or for him. According to Williams, he had a conversation with Robertson wherein he was informed that Robertson would pay the sum of \$30,000 and it was agreed that Robertson would make it available so that it could be uplifted from him and paid into a bank account which Williams had in Sydney. Williams recollected that the amount of the fee was uplifted by Soich and paid into that account. The following appears in the New Zealand notes of evidence:

Why was it necessary for her to go to Brisbane, to uplift the cheque so it would be deposited in your account in Sydney?---It is my recollection that there were aspects of the case which needed statements to be obtained and she went to Australia to do that and she intended to do this at the same time.

Are you saying that Miss Soich took statements from people in Australia while she was there?---I am not exactly - I can remember she made inquiries I think at the Public Trust Office in Sydney in respect of an estate in which Clark was involved and I consider she probably took a statement from someone in the Public Trust Office there.
(NZ CT 12570)

Williams then described the circumstances in which portion (he thought \$20,000) of moneys then standing to the credit of the Sydney bank account was withdrawn from it and placed with Segal and Stern to be invested on short term loan. Segal and Stern were a firm of solicitors practising at Bondi Junction, Sydney, and Malcolm Wynn whom Williams had known in New Zealand was then a

solicitor with the firm. The repayment of that loan with interest was made to Wynn, who had in the meantime left Segal and Stern and commenced to practise on his own account. The amount repaid including interest was remitted to New Zealand through the Australian Reserve Bank to discharge or reduce a liability which Williams had to the Inland Revenue Department. (NZ CT 12570-71)

The balance of moneys was paid in Australia to the credit of an account conducted by a New Zealand firm which had advanced money to Williams in New Zealand, and the amount of the liability of Williams to that lender was reduced to that extent. (NZ CT 12572)

Williams initially told the New Zealand Commission that this payment of \$30,000 was for his fees for acting for Clark for work done by him prior to the trial including travelling to Brisbane in connection with the extradition. (NZ CT 12569-70)

Williams also told the New Zealand Commission that the fee charged by him for appearing for Clark at the trial was also \$30,000. That amount was paid prior to the trial. (NZ CT 12569) It was paid in cash. (NZ CT 12575) Williams could not be certain of the identity of the payer, but had an idea that it was Peter Fulcher a drug trafficking associate of Clark both in Australia and New Zealand. (NZ CT 12576)

Williams gave evidence that late in March 1979 a further \$30,000 was paid into his bank account in Sydney, and this was described by him as a 'retainer' to act for Clark. (NZ CT 12572) The Commission is unaware of any transfer of these funds to New Zealand.

Williams was then asked whether in proceedings before the Law Society involving him he had disclosed that the total fee in respect of the trial was \$60,000. (NZ CT 12572) He replied that his recollection was that he said in those proceedings that he charged \$30,000 for the conduct of the trial and that he charged a further \$30,000 for work which he described to the Commission by the use of such phrases as '... the preparation ... which included the depositions, bail application to the High Court; an application for change of venue; analysis of other cases; probably other matters ...'; (NZ CT 12569) '... the earlier (than trial) work, including going to Australia

and other matters'; (NZ CT 12573) 'the work done over previous years'. (NZ CT 12574) Williams also said that in those proceedings there was discussion about retainers and that 'we' were talking about the \$30,000 he received from Robertson as a special retainer and about the \$30,000 paid to the bank account in Sydney in March 1979 as a general retainer.

The following questions were asked of Williams by the Commission and he gave the following answers when he gave evidence at Auckland:

In your evidence you made it plain at the Law Society inquiry that your total fee for Clark's trial in 1978 amounted to \$60,000?---No, my understanding was that the fee for the trial was \$30,000 but I was paid an additional \$30,000 for the work done over previous years. It has always been my statement that the fee for the trial was \$30,000. Are you saying that that payment by Robertson to Miss Soich was by way of some sort of retainer?---At the time, it wasn't paid as a retainer but when the question became the subject of inquiry by the Law Society, I went and looked at Halsbury on the question of retainers. The question is, are you saying that that payment to Miss Soich which was placed in your account was by way of being some sort of retainer?---I don't know whether it was specifically paid as a retainer, I had a conversation about fees with Mr Robertson and he told me there was \$30,000 available to be paid, I don't think it was paid as a retainer at the time.

Earlier this afternoon you said that that \$30,000 was for work done at the preliminary hearing and for other work that you had done, is that right, did you say that?---Just what \$30,000 went to what, I now wouldn't be sure. I know I received \$30,000 for preliminary work in the early years, then received a fee for the trial for \$30,000...

I am talking about money paid by Robertson to Soich for you, for payment for work done; the depositions; bail to the High Court; going over them and all the rest of it: that can't possibly be in the nature of a retainer can it?---As I have said at the time it was a continuous thing, I had done certain work and preliminary work was still to be done and I was anxious to get some fees in and \$30,000 was paid.

Why call it a retainer today? Why choose to call it that if it in fact was for work done?---Perhaps that was a misnomer; there was work done, I wanted to get money in and it was paid. (NZ CT 12574-75)

Williams stated that the Law Society inquiry concerned particularly the \$30,000 paid in March 1979 as a 'retainer' and also his trip to England later that year. According to Williams, 'mention' was made to him by Leary that Clark wished to pay a retainer, and Williams discussed the matter with Ryan and consulted the code of ethics in relation to retainers. It was the opinion of Williams that the retainer was to relate to any matter which might arise out of Clark's previous activities or matters that might be framed against him. (NZ CT 12576) It was only later when he looked at the matter of retainers, particularly in connection with the Law Society inquiry, that he came to regard the retainer as a general retainer. (NZ CT 12756)

Williams said that his understanding was that there were matters which had occurred prior to the receipt of his retainer which could well have emanated from Clark's arrest and Clark wished to retain a barrister in case that happened. (NZ CT 12577) He said that Clark was in New Zealand subsequent to his acquittal in late 1978. He was asked whether the matters about which Clark considered he might be interviewed were Australian or New Zealand matters, and he answered:

I suppose a combination of both with hindsight now, but there were threats made as I understand it to him following the trial that he might be subjected to further charges in New Zealand.

Williams said that the retainer was arranged through Leary, and that the amount of it (\$30,000) was paid in Australia and deposited into the Williams bank account there. He did not know by whom that payment was made. He said that at the time he 'did not really put (his) mind to' the identity of the person who made the payment. He had not since discovered the identity of that person. According to Williams, he did not know whether there had been an opportunity to ask. He had no recollection of asking Clark whether he made the payment. He said that prior to his appearance before the Commission it had not occurred to him to make an inquiry. He conceded that he was probably asked the same question in the proceedings before the Law Society.

You are aware are you not of the suggestion made in England that Counsel in New Zealand were generally retained to act for couriers and drug messengers?---That has been brought to my attention.

(NZ CT 12578-79)

Williams also gave evidence that Clark was not charged with any offence which absorbed the whole or any part of the sum of \$30,000 paid to him in March 1979 by way of retainer.

Have you ever had before or since a retainer in relation to criminal matters involving payment of an amount approaching \$30,000?---No, I have had retainers but to the best of my recollection I have never had a retainer of that quantum. (NZ CT 12587)

Before the New Zealand Commission, Ryan was questioned about any recollection he had of any conversation with Williams concerning the payment or possible payment by Clark to Williams of a retainer. Ryan stated that he remembered that early in 1979 Williams raised with him the matter of Williams acting for Clark on other criminal matters whatever they might be, and Ryan suggested that Williams get a retainer from Clark in case Clark vanished again. (NZ CT 12612)

Ryan was asked whether in the past he had with Williams examined and discussed the legalities of counsel accepting a retainer. Ryan replied that 'at some stage' he related to Williams that he had once acted for a man who informed him that prior to his arrest for burglary the man had paid a retainer to another barrister to appear for the man if he were apprehended. Ryan was asked whether there were any occasions when he and Williams sat down and got out the book of rules, and he answered that he thought that happened 'when it all blew up, I mean it was coming apart at the seams', which he thought must have been about the same time as the Law Society inquiry. (NZ CT 12613) Ryan informed the New Zealand Commission that he did discuss with Williams the relevant provisions of the code of ethics and that he thought that discussion took place 'shortly before' the Law Society inquiry. According to Ryan, Williams approached him to discuss the matter. (NZ CT 12627)

Ryan was informed by the New Zealand Commission of the evidence given to it by Williams that he had a detailed discussion with Ryan in March 1979 as a result of which he notified Leary that he would accept a retainer.

(NZ CT 12628) According to Ryan, there was a 'general discussion' about retainers and that discussion may have occurred in March 1979. Ryan had no recollection of the relevant provisions of the code of ethics being consulted during that discussion, although he recalled such a consultation having taken place in 1982. (NZ CT 12629)

Ryan (who was Junior Counsel to Williams at the Clark trial) was also questioned by the New Zealand Commission about his knowledge and view of the amounts said by Williams to be his fees. Ryan stated that before the Clark trial he had no discussion with Williams about the fees to be charged Clark nor was he aware at that stage of the amount of fees which Williams was proposing to charge. (NZ CT 12601) Ryan said that after the trial he heard that Williams had received between \$20,000 and \$30,000 but that he 'couldn't believe it'. (NZ CT 12602) According to Ryan, he later said to Williams:

'It is all around Wellington: I got a few crumbs from Dives' table and you got a fortune.'

Ryan related that Williams did not inform him of the amount of the 'fortune' but assured him that he earned 'every cent' of it.
(NZ CT 12602-03)

Williams also gave evidence to the Commission about the 'gift' of \$5000 made to him in October 1978 towards the purchase of sails. He said that in about October (1978) Clark was aware that Williams was considering entering the Sydney-Hobart yacht race and \$5000 was paid to Hoods Australia as a gift from Clark towards the purchase of sails. Williams obtained the sails. He went to Sydney to make arrangements for their purchase. He was asked whether he inquired as to how the money was paid - whether it was transmitted from New Zealand or came from somebody in Australia, and he answered:

It was my belief he had assets in Australia, quite large assets. He led me to believe he was a man of wealth and I presume the money came from his assets in Australia. (NZ CT 12582)

Williams also gave evidence to the Commission about a further 'gift' to him from Clark of a motor vehicle which Williams valued at \$10,000. According to him, while he was appearing at Clark's trial in Wellington it became known that Williams was looking for a 4-wheel drive vehicle. It was delivered to him some time after the trial and he 'presumed that to be a bonus for winning the trial'. It was a secondhand vehicle and was given to him in Auckland. He thought that its cost at the time would have been about \$10,000. He kept it for between six months and one year and then sold it for \$10,000. He considered it 'a bonus, a gift' and did not declare its receipt to the Inland Revenue Department. (NZ CT 12583-84)

The Commission is particularly concerned in relation to the evidence of fees and gifts received by Williams for allegedly acting for Clark. It is of the view that the amount of these fees cannot be justified on any rational or proper basis. The Commission concludes that the only reasonable view open to it is that the abovementioned rewards were nominated and accepted by Williams without regard to proper professional standards. The Commission is concerned that Williams must have known of Soich's improper relationship with Clark and her absences from New Zealand in his company, and that he continued to employ her despite this knowledge. It is concerned with the propriety and circumstances of Williams' journey to London. It is also concerned with the fact that Williams fraternised with his criminal clients to a degree that is not acceptable. Examples of this behaviour are the celebration party at a Wellington hotel after Clark's acquittal which was attended by Williams, his employee Soich and a considerable number of the drug-related underworld. Another example of this unacceptable behaviour is his relationship with members of the Clark group whilst Williams was in Sydney which included social intercourse with members of that group. The Commission is also concerned that Williams may not have been frank with the Law Society during its investigation of his acceptance of the so-called 'retainer'. It appears to the Commission that certain of the evidence given by Williams to the Commission in relation to fees and/or retainers paid to him is incompatible with the account which he gave to the Law Society.

The Commission is of the view that the Law Society should examine the above matters in particular and also any other matters which arise from the Commission's report.

K. Ryan

The matters in which Ryan acted for Clark or seemingly in the interest of Clark or was apparently asked to so act included:

- (1) He appeared for Brunnell who with Clark was charged with the importation of heroin:

In December 1975 Ryan appeared for Brunnell at the preliminary hearing when Brunnell and Clark were charged with importation of heroin. He later appeared for Brunnell at his trial and, when the jury at that trial was unable to agree, at the re-trial when he was acquitted. (NZ CT 12592)

Ryan told the New Zealand Commission that Brunnell's defence was that he was 'an innocent dupe' and that he knew nothing at all of the presence of heroin. Ryan also stated that it was an advantage to Brunnell at his trial that his co-accused Clark was not also present at the trial. (NZ CT 12595)

- (2) He appeared as Junior Counsel at the trial of Clark upon the same charge:

Ryan told the New Zealand Commission that he understood he was asked to appear as Junior Counsel because of the scientific evidence and because he had cross-examined at the Brunnell trials a witness intended to be called by the prosecution at the Clark trial. Ryan told the New Zealand Commission that prior to the Clark trial he had appeared for that witness when the witness pleaded guilty to a charge of supplying cannabis and that he (Ryan) now regarded it as a mistake on his part to have appeared for Clark at the later trial when Ryan's former client was to be cross-examined on behalf of Clark. (NZ CT 12593-94)

- (3) He was informed by Leary that he was required to accompany the party of visitors to Clark in England:

Ryan also gave evidence to the New Zealand Commission concerning the approach made to him that he travel to England to see Clark. His recollection was that in about November 1979 he was in Christchurch assisting Williams in the defence of Fulcher when he received an urgent telephone call from Leary in Auckland who said that he (Leary) had booked a passage for Ryan to England and

that he had authorised the BNZ, Christchurch, to issue to Ryan travellers cheques in pounds sterling denominations. Ryan's recollection was that the cheques were to be of the value of £1000. He attended at the bank at Christchurch and signed the cheques. When he returned to Auckland he announced his refusal to go to England. He was asked by the New Zealand Commission his reason for this refusal, and he replied that it was because he became aware of the charges that were then pending. It was then put to Ryan that there was a suggestion that he did not go to England because he was professionally engaged in a murder trial, and he replied that that was 'partly correct' but that other arrangements could have been made in respect of that trial. (NZ CT 12603) Ryan said that he later made inquiry of Leary as to what he (Ryan) should do with the travellers cheques and that Leary replied that he could have them. Ryan banked them to his office account and used the money for his own purposes. He said, 'I am sorry to say these things but you have asked me.' (NZ CT 12604)

(4) He acted in connection with a payment to Clark which was by way of a refund to him of moneys paid upon the intended purchase of property:

Ryan introduced Clark to a client named Daniel Brown, who had built a block of flats. Clark according to Brown told him he wished to purchase the flats. Clark took \$25,000 in cash from a brief case and gave it to Brown as a deposit. No receipt was given to Clark by Brown. Clark later informed Brown that he did not intend to proceed with the purchase and demanded his money back. Brown had spent the money and approached Ryan and asked him to raise a mortgage on the flats in the amount of \$25,000 so that Brown could pay Clark the money. Ryan arranged an advance through a client society with which Ryan's brother, also a solicitor, was associated, secured by mortgage over Brown's property. The sum of \$25,000 was paid into Ryan's trust account by the society and a cheque made payable to Alexander Sinclair (Clark) was drawn by Ryan on that account and deposited to the credit of Alexander Sinclair in the trust account of T.J. Doole & Partners. (NZ CT 12904-6; NZ E 23, 24, 25, 50)

According to Ryan, Brunnell told Ryan before Clark absconded that Clark would be responsible for payment of his (Ryan's) fees for appearing for Brunnell. Ryan was not paid for his defence of Brunnell until he stipulated that he would appear at the Clark trial provided Clark paid his fees for the Brunnell trials. Ryan has said that at the time of the making of that

stipulation he had received an amount of only \$900 for his defence of Brunnell. According to him, Ryan required \$3000 for the Brunnell trials and \$3000 to appear for Clark. Ryan informed the New Zealand Commission that he conveyed the terms upon which he would appear at the Clark trial to Clark himself then in gaol awaiting trial and to Soich also. (NZ CT 12594-96)

Ryan said that he did receive the sum of \$6000, of which half was in cash and the balance in cheques. The receipt issued by Ryan for the payment of \$6000 is in favour of Peter Fulcher, although Ryan informed the New Zealand Commission that he had no recollection of receiving the money from Fulcher. The relevant receipt bears date 25 August 1978. (NZ CT 12597-98)

Ryan also told the New Zealand Commission that at about the same time as the Clark trial and after Ryan had received the \$6000 he received instructions to act for a man named Ronald Terrence Brown who had been charged with quite serious matters involving the Customs Department and with assault. Ryan stated that his records revealed that on 16 October 1978 he received an amount of \$5000 as a retainer to act for Brown. Ryan thought that that money was paid to him by Soich and that she said it was on behalf of Brown. The payment was in cash, and he was told that the source of the cash was Fulcher. According to Ryan, Brown accepted his advice and pleaded guilty to the charges. Ryan told the New Zealand Commission that he thought that a proper fee for his acting for Brown was \$1500. However, according to Ryan at the conclusion of the Clark trial he saw Fulcher in Wellington who told Ryan that he (Ryan) could appropriate the balance then standing to the credit of Brown 'as a bonus reward for the tremendous success in Clark's acquittal for which I am sorry in hindsight and I would add I didn't know I would be here today with all this'. Ryan later saw Clark in Auckland who confirmed that he could keep the balance as a bonus. (NZ CT 12599-600)

Ryan gave evidence to the New Zealand Commission that he did not know the identity of the persons against whose bank accounts the cheques forming part of the payment of \$6000 as above described were drawn. (NZ CT 12600)

The Commission is of the view that some of Ryan's behaviour as revealed by the evidence, particularly his own, is deserving of examination by the Law Society. It is clear to the Commission that Ryan himself believed, certainly at the time he gave evidence that some of his actions were at least

questionable. It is the Commission's view that it is more probable than not that Ryan was of the same opinion at the time he so acted. The matters which the Commission believes should be examined by the Law Society include the following:

- (i) Appropriating to his own use money which had come into his possession for another purpose under questionable circumstances. The Commission here refers to the travellers cheques to the value of £1000. Ryan performed no professional work of any kind either for Clark or anyone else in relation to this money.
- (ii) Stipulating that he would appear for an accused (Clark) at his trial, only if that accused paid fees owing to Ryan for his earlier defence of another person then accused with Clark (Brunnell).
- (iii) Accepting a brief as Junior Counsel for the defence at Clark's trial on the basis that he had particular knowledge of one of the witnesses for the prosecution (Kirau) when he had acted for that witness previously.
- (iv) Accepting money from a known criminal to be applied in satisfaction of fees owing for appearing for another criminal charged with a serious offence.

The Law Society should also investigate any other matter concerning Ryan arising out of the evidence that it deems proper.

K.M.M. Soich

The Commission has been informed that Soich has been admitted as a barrister and solicitor in New Zealand. Further that she has never applied for nor been granted a practising certificate. A summary of the evidence she gave concerning her association with Clark is set out in Part Two of this report commencing at page 27.

It is not the function of this Commission to be a commentator on moral behaviour. The Commission is concerned however with the nature of Soich's relationship with Clark during the time she purported to be his legal adviser. On her own admission a sexual relationship with Clark commenced about a fortnight after his acquittal at Wellington and continued until their arrest. According to her she was still employed by Williams until at least 17 September 1979 but had taken leave without pay in order to be with Clark. During her time with Clark she associated freely with his associates some of whom stood trial with her and Clark at Lancaster. Soich endeavoured to maintain an air of injured innocence whilst giving evidence both in Sydney and Auckland, and did her best to persuade the Commission that she knew little if anything of Clark's illegal activities. The Commission is unable to accept her explanations in this regard and is of the firm view that if Soich did not know of all of Clark's nefarious deeds she was certainly aware that the money he so lavishly expended came from no legitimate source and indeed she was probably aware that the source was drug trafficking.

It disturbs the Commission that Soich appears unrepentant. It is the view of the Commission that she should not be permitted to practise law in New Zealand or Australia. Her behaviour fell far short of that expected of a member of the legal profession. In the Commission's view consideration should be given to whether her name should be removed from the roll of barristers and solicitors. The Commission understands that notwithstanding the absence of a practising certificate she would be entitled to make application for employment by a law firm in New Zealand. If it is within the competence of the Law Society so to do the Commission is of the view that consideration should be given by the Society to directing its members that Soich should not be so employed.

- (iii) Term of Reference (e): Identification of real or personal property falling with (e) (i)-(iv)

The Commission received much evidence about the movement throughout the world of money obtained by Clark and his associates from illegal drug trafficking and has in its Australian report traced that movement of money and its ultimate destination as known to the Commission. In particular, in Part Two Chapter (f) of the Australian report the Commission identifies property in which Clark appears to have an interest.

The Commission, in relation to the construction of this particular term of reference, notes that only (e) (i) contains the expression 'illegal activity'. That expression is, of course, given a special definition in the Warrant.

It appears to the Commission that the following items of personal property are capable of falling within one or other of the sub-paragraphs of term (e):

(e) (i)

- . The share certificates and supporting transfers relating to Clark's Australian shares which were in the possession of the stockbrokers, Buttle Wilson & Co, in New Zealand prior to the sale of Clark's Australian shares through Bain & Co in Sydney. This transaction has been explained earlier in this Part under term (a).

(e) (ii)

- . The gift of the sails and the Toyota motor vehicle by Clark to P.A. Williams, as described in this Part under terms (b), (c) and (d), falls within this sub-paragraph;
- . Soich in her evidence to the Australian Commission (CT 12126) said that Clark gave her jewellery which she estimated to have a value of around \$20,000.

(e) (iii)

- . Soich also gave evidence to the Australian Commission of having traded-in in England a Mercedes Benz motor vehicle valued at £10,450 belonging to Clark. In effect she exchanged this vehicle for a Porsche which she registered in her mother's name. (CT 12108) Subsequently Soich sold the vehicle in England for £7,600. According to her this money was expended on her air fare back to New Zealand, a portion went to Clark's English solicitors for legal fees, and some £1,500 was used by those solicitors to cover Clark's personal needs whilst in custody.

(e) (iv)

- . According to Soich Clark gave her \$5,000 which she put towards the purchase of a 1978 MGB-GT motor vehicle in New Zealand, the purchase price being \$11,750; (CT 12123)
- . Clark purchased a Jaguar 1977 XJS motor vehicle in November 1978 for \$41,000 in New Zealand. He had it registered in the name of Shirley Murdoch. Subsequently Clark exchanged this motor vehicle for a Range Rover which he registered in the name of Jan Hromadek (the evidence discloses variations in the spelling of this name), a Honda and \$1,000: the Range Rover was later sold by E.P. Leary to cover Clark's debts including fees allegedly owed to Leary; the Honda was registered in Soich's name and she had the use of it until it was sold for \$9,240 which was paid into Doole & Partners trust account (for Sinclair) on 8 August 1979; the \$1,000 was also paid into that account;
- . In addition Soich gave evidence to the Commission (NZ CT 12713) that she commissioned a painting by New Zealand artist Grahame Sydney for \$2,000 which she received from Clark. It would appear this painting is still in Soich's possession.

Clark was the beneficial owner of two parcels of real estate in New Zealand. Both have been mentioned earlier in this report. One parcel is that situated at Okiato Point. This remains property to which Clark is beneficially entitled although the Commission has been informed that the New Zealand High Court has granted an injunction at the suit of the Income Tax Commissioner 'freezing' this asset pending the outcome of proceedings to determine Clark's tax liability in New Zealand. Obviously some person or persons have or have had possession or control over this land from time to time in Clark's absence, thus bringing it within (e) (i).

The second parcel of land is that situated at Waihi: this has been sold and no longer forms an asset of Clark. However whilst Clark was the beneficial owner that land also, it would seem, must have been in the possession or control, from time to time, of persons other than Clark so that it, too, falls within (e) (i).

Okiato Point property: acquisition

The details as known to the Commission of the acquisition of that property and of the making of the improvements thereto are that by agreement bearing date 17 November 1978, Clark (using the name Sinclair) acquired the leasehold of the property with an area of more than four acres for a consideration of \$37,500.

On 22 January 1979 Clark (as Sinclair) bought the freehold of the property for a consideration of \$93,000.

Leary told the Commission that in or about November 1978 Clark was interested in purchasing a leasehold property in Russell for about \$30,000. According to Leary, about that time or early in 1979 he referred Clark to T.J. Doole & Partners, solicitors of Parnell, whom Leary regarded as better situated to act in such matters. Leary has further stated:

Shortly before Christmas of 1978 he (Clark) desired to renovate the existing house on the property at Russell and required an architect at short notice. I suggested my own brother J.M. Leary, who was then resident in the Rotorua area and he prepared sketch plans of the proposed alteration to the existing house. At that stage I understood he (Clark) was realising assets in Brisbane in order to pay for the property purchase and all matters incidental including my outstanding fees. (E 990 p8)

Leary gave evidence to the Commission that Clark intended or wished to have the Okiato Point property held in trust for his son and that he (Clark) was not to be the beneficial owner of the property. (NZ CT 12859)

When the Commission took evidence in New Zealand towards the end of November and at the beginning of December 1982, title to the property had not been registered in the name of Sinclair. Boyd's evidence to the Australian Commission in 1982 was that the deeds were then held by Boyd on behalf of Clark.

The property envelops a considerable part of Okiato Point. At the time Clark acquired the property it had a three-bedroom house and boatshed on it.

Okiato Point property: erection of improvements

In February and March 1979, six concrete water tanks, each of about 5000 gallons capacity, were installed, piping and drainage work was commenced and a fairly large area was cleared for a new house to be built. That house has been built to 'lock-up' stage.

According to Leary, it was originally proposed that payments for the cost of improvements to the property were to be paid by T.J. Doole & Partners out of moneys that were to be deposited by Clark. However, said Leary, that arrangement 'became unworkable' and he sent his brother to his (E.P. Leary's) own bank to set up the J.M. Leary Building Account. (NZ CT 12862) This account was funded with moneys from Clark's money in the Sinclair trust account with T.J. Doole & Partners.

Clark granted to Leary power to act as his attorney, and Leary told the Commission that in exercise of that power he authorised T.J. Doole & Partners to make payments from time to time in respect of the property. (CT 9126)

Payments were made from the account styled A. Sinclair in the trust account of T.J. Doole & Partners towards the property as follows:

<u>NZ\$</u>	
93,654.02	Towards purchase of freehold
37,790.76	Towards purchase of leasehold
132,000.00	To J.M. Leary Building Account
<u>149,405.68</u>	To builders supplies, insurance, architects fees, etc.
<u>412,850.46</u>	
=====	

J.M. Leary told the New Zealand Commission that when he first met him Clark was introduced as Sinclair, although Leary knew that he had previously used the name Clark. (NZ T 12643) J.M. Leary was contacted by his brother who conveyed to him Clark's request that J.M. Leary go to the Bay of Islands to have a look at the Okiato Point property and to design a house for it. (NZ T 12643) On the day following this telephone call, J.M. Leary met Clark at the property. His next meeting with Clark was in January 1979.

According to J.M. Leary the outcome of these two meetings was that he was instructed to draw plans and other necessary documents for the construction of a dwelling to be erected on the property. Clark told J.M. Leary that he (Clark) would like to spend \$250,000 on that project. However, J.M. Leary was given authority by Clark to exceed that figure but he would have to notify Clark of the amount of any excess.

Now that would be a fairly large sum of money this man was proposing to spend?---Yes.

Had you made any inquiries of anyone as to his financial ability to pay?---No. He told me himself he was in business.

What business?---Import and export.

Of what?---Fish and furniture were two of the things he mentioned.

Were you aware that within a few weeks prior to speaking with you he had been acquitted on a charge of importing heroin into New Zealand?---My brother told me when he told me he wanted me to go up there and design the house he (Clark) had been involved in a drug charge but had been acquitted.

When this man told you he was an importer of fish and furniture did it cross your mind about the drug charge?---No. (NZ T 12644-5)

J.M. Leary told the Commission that at his first meeting with Clark he asked for a retainer fee of \$1000 which Clark paid him in cash on the same day. According to J.M. Leary, the amount of all cash payments received by him from Clark in connection with the project totalled \$1300. (NZ T 12654) J.M. Leary has also said that the men employed by him on the job were paid by him in cash which he withdrew from a bank account styled J.M. Leary Building Account which J.M. Leary knew was funded in the way described previously. (NZ T 12646)

Stenbeck gave evidence to the New Zealand Commission that he was retained by J.M. Leary who instructed him to provide the structural calculations for the house then being built at Okiato Point. J.M. Leary furnished him with a copy of the plans. (NZ E 17) Stenbeck said that he was told by J.M. Leary that Clark was a financier (NZ CT 12559) and Stenbeck also stated:

I was aware that (J.M.) Leary was paying the tradesmen and most of the expenses associated with the construction of the house in cash. I never saw the cheque book that Leary had but he seemed to be obtaining the cash by writing a cheque and then cashing it. Leary told me that he wrote on the butt of the cheque what it had been drawn for. (NZ E 17)

Stenbeck said that he had never before come across that sort of system of payment. (NZ CT 12559)

Stenbeck told the Commission in New Zealand that on one occasion J.M. Leary told him that when he had been first approached by Clark to build the house he (J.M. Leary) had expressed doubt as to whether Clark had the necessary money for such a large project and Clark had then given to him \$5000 in cash which, J.M. Leary told Stenbeck, convinced J.M. Leary that the money would be available. (NZ E 17) Stenbeck's further recollection as told to the Commission was that J.M. Leary told him that Clark pulled the \$5000 out of his back pocket. (NZ CT 12653) J.M. Leary gave evidence to the Commission that this allegation was 'quite untrue'. (NZ CT 12651-52)

J.M. Leary also told the Commission that the total amount expended upon work supervised by him upon the house was approximately \$250,000 which meant that he was entitled to receive a fee of \$25,000. Instead, he was paid \$18,000 in three equal payments which were made by drawings on the abovementioned building account. (NZ T 12648-49)

Okiato Point property: present value

Total expenditure on the property to date is approximately \$473,000. The Commission heard evidence in New Zealand from a number of persons who were involved in the making of improvements to the property. According to J.M. Leary, before he was approached about drawing plans he received instructions from his brother in late November, 1978 to make a valuation of

the then existing buildings at Okiato Point. (NZ T 12642) He was already aware of the value of the land because he was present when discussions took place between his brother and Boyd concerning negotiations to purchase the leasehold of the property for \$30,000. (NZ T 12643) J.M Leary reported that in his opinion the existing dwelling was worth \$20,000. (NZ T 12643)

E.P. Leary gave evidence to the Australian Commission in July 1982 and said that a seller then of the Okiato Point property 'would be lucky to get \$350,000'. (CT 9140) On the other hand, Boyd told the Australian Commission in June 1982 that in his view the property would be worth \$500,000. (CT 7852e)

Waihi property

Another property in New Zealand in which it appears Clark had an interest is situated at 38 Moresby Avenue, Waihi. The evidence in connection with that property is to the following effect: it was owned by Patrick Norton-Bennett (a Clark associate) who transferred it to Clark who used the name C.D. Goldfinch; part of the consideration for the transfer was probably the discharge of a debt owed (probably for the purchase of heroin) by Norton-Bennett to Clark; it may have been intended that the balance of the consideration for the transfer was money to be left by Clark in Australia for Norton-Bennett; the property was later sold to Hinch and Moore and \$26,115.60 applied for the benefit of Clark.

The house was purchased by Norton-Bennett in 1978 and it appears that the purchase price was approximately \$44,000. Norton-Bennett later agreed to sell it to Clark for an amount in excess of \$50,000. Evidence received by the Commission in New Zealand is to the effect that payment of the purchase price by Clark was to be satisfied in part by the provision of heroin. A quantity of heroin was supplied to Norton-Bennett in New Zealand and he deducted from the amount paid by him for it an amount of between \$18,000 and \$20,000. The balance of the purchase price was to have been collected by Norton-Bennett in Sydney, but when Norton-Bennett attempted to do so Clark had by then travelled to the United Kingdom and the money was not available in Sydney.

The documents concerning the sale by Norton-Bennett to Clark were signed by Norton-Bennett without the name of the purchaser appearing on them. T.J. Doole & Partners acted on that sale. The name of the purchaser which subsequently appeared in the documents is Goldfinch.

There is further evidence before the Commission that the contract documents in the sale to Goldfinch were signed by Norton-Bennett in the presence of Soich. There is still further evidence that Soich gave to Norton-Bennett as the reason for the low purchase price of \$26,000 in the sale to Hinch and Moore the circumstance that the house had in the meantime been burgled and considerable damage done to it. (NZ CT 12792)

The Commission has received evidence that when Norton-Bennett later wrote to Boyd inquiring as to payment of the balance of purchase moneys due to him on the sale to Clark he received from Boyd a letter in abrupt terms that he (Boyd) would contact Mr Goldfinch who Norton-Bennett would know as Terry Clark. Later still when inquiry was made of Boyd's office, the information supplied was that the whole file regarding the Waihi property could not be found. (NZ CT 12792-93)

Boyd told the Australian Commission that he acted for Clark in the transfer of the property to Goldfinch. According to Boyd, he received instructions from Clark that Norton-Bennett owed Clark some money and that in consideration of that debt Norton-Bennett had agreed to transfer his property at Waihi to Clark. Boyd had a search made of the title to the property, and he prepared the transfer. He did not attend when the transfer was executed, but Clark or Soich attended on that occasion. Boyd has further told the Commission that he received back the transfer and the certificate of title and instructed his agents to register the transfer.

The nett proceeds were approximately \$25,000 and of that \$15,000 was deposited into the building account for the Okiato Point property and \$10,000 was received by him (Boyd) in respect of work done and to be done by him for Clark. (CT 7809)

Boyd also acknowledged before the Australian Commission that he later received a letter from Norton-Bennett inquiring as to the whereabouts of money due to him and that he (Boyd) replied that he had referred the matter to his client for attention. (CT 7867)

(iv) The Nominee Company System

In the course of taking evidence in New Zealand the Commission heard evidence relating to the use of nominee companies by New Zealand solicitors. In the course of this evidence the Commission learned of the serious abuse of the system by some solicitors. The Commission feels bound to bring this evidence to the attention of the Government.

The evidence was, in effect, that the system was legitimately used by solicitors in New Zealand in such a way that contributions for investment by individuals were deposited with solicitors and then, whether alone or when aggregated with other deposits, advanced to a borrower through a company which was a bare trustee having itself no claim upon the money. In the books of account of the solicitor the name of the company appeared as mortgagee which took as security a mortgage over property of the person to whom the advance was made. According to the evidence before the Commission the trust account ledger kept by the solicitor was required to disclose the names of the lender(s) and of the borrower(s).

However, the evidence also indicated that the system was being abused in that it was being used to disguise the true nature of transactions. (NZ CT 12659-60).

The Commission received evidence of one such case from E.P. Leary who gave evidence to the Australian Commission in July 1982. He said that the house in which he then lived at 96 St Stephen's Avenue, Parnell, Auckland (CT 9089) was mortgaged for \$105,000 to T.J. Doole Nominees Limited, a nominee company conducted by T.J. Doole & Partners. It was put to Leary that it had been alleged that the house had been acquired with money provided by Clark for that purpose. Leary denied the allegation and said that anybody was welcome to investigate his finances.

Leary then went on to say that he could not receive money from Clark on a mortgage because 'it would have been readily ascertainable' and to borrow money from a client even through another solicitor would invite disciplinary action. (CT 9096-97).

Before the New Zealand Commission in November 1982 Leary was asked whether he knew the identity of the contributories to the advance to him through T.J. Doole Nominees Limited. He replied:

I had no idea who those contributories were until I received quite a shock earlier this year over a fellow named Schnellinger.

Leary went on to explain that earlier in 1982 Schnellinger was convicted in New Zealand on a charge of conspiring to import hashish into New Zealand. According to Leary, he acted in the same case for another of the alleged conspirators. Leary said that in the course of the trial it emerged that Schnellinger was one of the contributories to the mortgage advance to him. Leary was asked whether he had bothered to find out the identity of the other contributories to his mortgage and he replied that he had not because according to the rules governing the conduct of nominee companies he understood he was not entitled to know. (NZ CT 12860)

Such evidence of abuse of the nominee company system to 'launder' drug money and thus conceal the source of that money caused the Commission in New Zealand to call evidence before it about a particular investigation made by a District Law Society and about the nominee company system generally. John Malcolm Murfitt told the New Zealand Commission that in 1972 he commenced practice as a barrister and solicitor in Auckland. The District Law Society later caused an investigation to be made of Murfitt's trust account and the outcome was that he admitted the commission of about thirty offences and his name was removed from the roll of practitioners. He was subsequently charged with certain criminal offences in relation to these matters and sentenced to a term of imprisonment.

John Gilmore Tuck gave evidence that he was a chartered accountant appointed under the Law Practitioners Act to investigate and report to the Auckland District Law Society on the trust account operated by Murfitt. After being directed by the Commission to do so, Tuck produced his report and answered questions about the investigation of Murfitt. His evidence to the New Zealand Commission may be summarised in the following way:

- . Suspicion arose upon investigation of Murfitt's trust account when it was discovered that a very large percentage of the advances were in arrears as to interest. Tuck approached Murfitt and stated that he (Tuck) would need to investigate each and every advance and sight every security and authority of lending from the contributor. Apparently Murfitt became somewhat agitated and upon further questioning commented that in a number of advances the lenders and the borrowers were one and the same person.

- . Upon further investigation, Tuck tracked down evidence revealing the possible identity of borrowers and lenders which led to the suspicion that names used in the particular cases in the records were 'dummies or aliases'.

- . A further matter which caused suspicion and led to further investigation was the frequency with which large amounts of cash were deposited to the trust account and the frequency with which cash cheques or cheques subsequently endorsed to cash were drawn on that account. According to Tuck, drawing cash cheques from a solicitor's trust account is relatively unusual in New Zealand.

- . The final point which led Tuck to further investigate the cash transactions was that in the trust records there were a number of names which he knew at that time could be linked with drugs or were names which he discovered were of non-existent persons.

- . This evidence led Tuck to the view that Murfitt had conspired to 'launder' large sums of cash by setting up trust accounts in fictitious names for people who had been involved in drug dealing. That evidence was confirmed by the police in Auckland. The police identified four relevant periods of large cash deposits to the trust account as corresponding with periods when illegal drug consignments entered New Zealand.

- . A number of advances appeared to be genuine advances on mortgage between arms length parties but Tuck was able to identify a number of borrowers and lenders which appeared to be aliases for other people. The object appeared to be to disguise the ownership of funds and the income derived from those funds.
- . There was evidence that some investors had been paid interest directly from the trust account when in fact it had not been received from the borrower.
- . In the transactions identified as 'laundering' schemes there was an all too frequent and conspicuous absence of valuations, particularly where the advance appeared to have been made upon insufficient security.
- . From this investigation, Tuck concluded that the methods employed to 'launder' large sums of cash appeared to have been:
 - . Setting up trust accounts in fictitious names to disguise the true owners of cash deposits.
 - . In some cases sub-schemes were used whereby Murfitt held power of attorney for frequently non-existent persons.
 - . Mortgages were created in false names and moneys were 'advanced' to 'borrowers' who were in fact the contributors or their associates.

The Commission in New Zealand also received evidence from Michael John Levett, Assistant Secretary to the Auckland District Law Society. His evidence may be summarised in the following way:

- . The nominee company system leaves room for abuse if solicitors were minded to permit its use to launder money.
- . Solicitors receiving large cash deposits should be on their guard.

- . Levett was asked the following question and gave the following reply:

Now is there any mechanism whereby the warning lights start to flash in the Law Society rooms if a solicitor or if his accounts show frequent receipt of cash deposits?---These sorts of transactions would normally be referred to the Law Society by the auditor probably in an informal way. In other words they are not matters directly touched on in his responsibility as auditor, but nevertheless he would in the normal course bring them to the Society's attention.

(NZ CT 12894)

- . An auditor should be concerned with the source of funds deposited with a solicitor.
- . The Law Society was very interested in cases where large sums of cash were deposited. However, upon deliberation for quite some time the Society reached a conclusion that unless it could be established from some evidence that the solicitor had knowledge as to the source of funds then there was no disciplinary action the Society could take nor any action the police could take.
- . The above pointed to a deficiency in the law relating to the Society's powers concerning Solicitors' trust accounts and the facilities made available by solicitors.
- . It would be expected that an auditor would inform the Society of any known use of an alias. However he thought that in the vast majority of cases there would be no way the auditor could discover that.
- . The society had an extremely good liaison with the police and there was a particularly free flow of information between the two.
- . There were advantages in a system whereby a solicitor was required to furnish a schedule of cash deposits over a prescribed amount to the Society who could then monitor that solicitor's trust account. However nothing would stop practices such as the purchase for cash of a bank cheque which is subsequently deposited in the solicitor's trust account.

With the making of large cash deposits or the use of aliases through the solicitor's trust account the problem exists from the Society's point of view that one would need to show some evidence that the solicitor had knowingly taken part in some deception and of course one would need to know the purpose.

In the light of this evidence the Commission has included in its recommendations a reference to the nominee company system. An appropriate solution to this problem may be the establishment of a standing committee to monitor the administration of such nominee companies.

PART FOUR

Conclusions and Recommendations

Conclusions

1. The Commission finds that Terrence John Clark and persons associated with him in connection with illegal activity, as defined in the Warrant, transferred money from Australia to New Zealand for investment in New Zealand.
2. The Commission finds that such transfers of money which total not less than \$234,579 were effected:
 - (a) by means of the five procedures mentioned in Part Three of this report, in particular at pages 35-44;
 - (b) by means of an unspecified number of couriers, but including the persons mentioned in Part Three of this report, in particular at pages 45-50, who from time to time brought large sums of money to New Zealand secreted in suit cases or other items of luggage.
3. The Commission further finds that, in connection with the said transfers of money, certain persons connected with New Zealand assisted Terrence John Clark by providing him with banking, financial and legal services.
4. The Commission finds that the said banking, financial and legal services so provided are those mentioned in Part Three of the report and the persons who provided such services are the persons mentioned in that regard in Part Three.
5. The Commission further finds that moneys falling within paragraph (a) of the Warrant were invested in New Zealand as described in Part Three of this report and, in connection with such investment, certain persons in New Zealand, being the persons mentioned in this regard in Part Three, provided banking, financial and legal services as set out in Part Three.

6. The Commission further finds that John Milne Leary provided building and architectural services in respect of Clark's property situated at Okiato Point and that the provision of such services falls within paragraph (d) of the Warrant.

7. The Commission further finds that the evidence before the Commission:
 - (i) discloses that certain persons connected with New Zealand have or have had in their possession, custody or control, real or personal property of Terrence John Clark purchased with money obtained from illegal activities (as defined in the Warrant) as set out in Part Three of this report, in particular at pages 78-85;

 - (ii) discloses that certain persons connected with New Zealand have or have had in their possession, custody or control, real or personal property received, whether directly or indirectly, from Terrence John Clark as set out in Part Three of this report, in particular at pages 78-85;

 - (iii) discloses that certain persons connected with New Zealand have or have had in their possession, custody or control, real or personal property into which property of Terrence John Clark has been converted or for which property of Terrence John Clark has been exchanged as set out in Part Three of this report, in particular at pages 78-85;

 - (iv) discloses that certain persons connected with New Zealand have or have had in their possession, custody or control, real or personal property obtained by means of money received, whether directly or indirectly, from Terrence John Clark as set out in Part Three of this report, in particular at pages 78-85.

Recommendations

The Commission recommends to the Government that consideration be given by it to the following:

- (i) . whether legislation should be enacted providing that a court may at the suit of the Attorney-General make an order that specified property of a particular person be forfeited to the Crown where the Court is satisfied in respect of that property that such was acquired by that person from the proceeds of drug trafficking and whether or not such property is in the possession, custody or control of another person other than a person who proves he acquired such property as a bona fide purchaser for value without notice;
- . whether legislation should be enacted in respect of any property in New Zealand identified as having been acquired by Terrence John Clark providing for the forfeiture of such property to the Crown where a court at the suit of the Attorney-General is satisfied that the property specified was acquired by Clark from the proceeds of drug trafficking and whether or not such property is in the possession, custody or control of another person other than a person who proves he acquired such property as a bona fide purchaser for value without notice.
- (ii) That there be referred to the New Zealand Law Society, for such action as the Society may see fit to take in respect thereof, those parts of the Commission's report concerning the lawyers K.M.M. Soich, E.P. Leary, G.W.S. Boyd, T.J. Doole, P.A. Williams and K. Ryan, including the views expressed by the Commission in the report in respect of those persons.
- (iii) That there be referred to the New Zealand Law Society, for such action as the Society may see fit to take in respect thereof, those parts of the Commission's report which deal with the evidence received by the Commission concerning the misuse by some solicitors of the nominee company system.

Appendixes

APPENDIX A

Commonwealth of Australia Terms of Reference

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other
Realms and Territories, Head of the Commonwealth:

TO

DONALD GERARD STEWART

GREETING:

BY these our Letters Patent issued in Our name by Our Administrator of the
Government of the Commonwealth of Australia on the advice of Our Federal
Executive Council and in pursuance of the Constitution of the Commonwealth of
Australia, the Royal Commissions Act 1902 and other enabling powers, We
appoint you to be a Commissioner to make inquiry into the following matters so
far as they are matters connected with the peace, order and good government of
the Commonwealth and are relevant to the exercise and performance of the
powers and functions of the Parliament and Government of the Commonwealth,
namely -

- (a) whether Terrence John Clark, a person mentioned in the Finding made on 29 August 1980 in the Coroner's Court at Melbourne in respect of the deaths of Douglas Robert Wilson and Isabel Martha Wilson, engaged in activities involving contravention of laws of the Commonwealth, in particular laws relating to the importation, exportation or possession of drugs, and, if so -
- (i) the extent and nature of such activities of Terrence John Clark and persons associated with him;
 - (ii) the identity and involvement of persons associated with Terrence John Clark;
 - (iii) the methods of operation of Terrence John Clark and persons associated with him; and
 - (iv) the use made by Terrence John Clark and persons associated with him of banking, financial and other institutions in connection with those activities;
- (b) whether, in the course of, or in connection with, activities of a kind referred to in paragraph (a), Terrence John Clark or any person associated with him directly or indirectly made or offered any payment or inducement for, or in connection with, or endeavoured by means of a threat to procure, the disclosure by any Commonwealth or State officer, or any person who was formerly a Commonwealth or State officer, of information relating to the activities of Douglas Robert Wilson, Isabel Martha Wilson or any other person;
- (c) whether, in connection with activities of a kind referred to in paragraph (a), Terrence John Clark or any person associated with him procured or received, directly or indirectly, from a Commonwealth or State officer, or any person who was formerly a Commonwealth or State officer, any information (including information relating to any statement made by Douglas Robert Wilson or Isabel Martha Wilson concerning the activities of Terrence John Clark or any person associated with him);

- (d) whether Terrence John Clark or any person associated with him or acting on his behalf in any way unlawfully interfered with or unlawfully attempted to interfere with the course of justice in relation to offences against laws of the Commonwealth;

AND We declare that in these Our Letters Patent -

- (e) the expression 'drug' means a narcotic or psychotropic substance or any plant or material from which such a substance is derived or may be produced; and
- (f) a reference to a person associated with Terrence John Clark is a reference to a person who, in or in connection with activities of a kind referred to in paragraph (a) -
 - (i) was associated, either directly or indirectly, with Terrence John Clark; or
 - (ii) acted, either directly or indirectly, on behalf of Terrence John Clark.

AND We require you to make such recommendations arising out of your inquiry as you think appropriate, including recommendations as to the method of enforcement of the criminal law and the legislative or administrative changes (if any) that are necessary or desirable in the light of the results of your inquiry:

AND We declare that you are authorized to conduct your inquiry under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorized to make by any Commission issued, or in pursuance of any order or appointment made, by any of Our Governors of Our States:

AND We require you as expeditiously as possible to make your inquiry and, not later than 30 June 1982 or such later date as Our Governor-General may be pleased to fix, to furnish to Our Governor-General of the Commonwealth of Australia a report of the results of your inquiry and your recommendations.

WITNESS His Excellency the Honourable Sir Stanley Charles Burbury, Knight Commander of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire, Knight of The Most Venerable Order of the Hospital of Saint John of Jerusalem, Administrator of the Government of the Commonwealth of Australia.

Dated this 25th day of June 1981

STANLEY BURBURY

Administrator

By His Excellency's Command

IAN VINER

Minister of State for Industrial
Relations for and on behalf of the
Prime Minister

APPENDIX B

New Zealand Terms of Reference

Royal Commission to Inquire into and Report upon
Certain Matters Related to Drug Trafficking

ELIZABETH THE SECOND, by the Grace of God Queen of New Zealand and Her Other
Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To Our Trusty and Well-beloved DONALD GERARD STEWART, A Judge of the
Supreme Court of New South Wales:

GREETING:

WHEREAS you have been appointed by Letters Patent issued to you on the 25th
day of June 1981* by the Administrator of the Government of the Commonwealth
of Australia to make inquiry, inter alia, into the methods of operation of one
Terrence John Clark and persons associated with him in activities involving
contravention of laws of the Commonwealth of Australia, and, in particular, of
laws relating to the importation, exportation, or possession of drugs:

*Commonwealth of Australia Gazette, No. G27, 7 July 1981, p2.

And whereas you have, by Letters Patent issued to you on the 24th day of June 1981 by the Governor of the State of New South Wales and by Letters Patent issued to you on the 30th day of June 1981 by the Governor of the State of Victoria and by Letters Patent issued to you on the 25th day of June 1981 by the Governor of the State of Queensland, been appointed to make similar inquiry into activities involving contravention of the laws of the States of New South Wales, Victoria and Queensland:

And whereas it is a matter of public importance to ascertain whether, and if so by what method or agency, money which is the product of or is used for financing transactions relating to the importation, exportation, or possession of drugs is transmitted between Australia and New Zealand and whether or not it is invested in New Zealand:

And whereas it is a matter of public importance that such assistance should be given to the Commonwealth of Australia and to the States of New South Wales, Victoria, and Queensland as is necessary to enable a full inquiry to be made in New Zealand in respect of activities in New Zealand which relate to drug trafficking in Australia:

KNOW YE that We, reposing trust and confidence in your integrity, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said DONALD GERARD STEWART, to be a Commission to inquire into and report upon:

(a) Whether Terrence John Clark, or any person associated with Terrence John Clark, in connection with any illegal activity transferred money to New Zealand -

(i) For investment in New Zealand; or

(ii) With intent, by any means, to transfer the money back to Australia,-

and, if so, by what method or agency the money was so transferred:

- (b) Whether in connection with any transfer or investment of money described in paragraph (a) of this warrant any person connected with New Zealand assisted Terrence John Clark by the provision of banking, financial, or legal services or by procuring the provision of such services:
- (c) If the assistance so provided involved the provision of banking, financial, or legal services, what services were provided:
- (d) If the assistance was other than the provision of banking, financial, or legal services, what was the nature of it:
- (e) Whether any person connected with New Zealand has or has had in his possession, custody, or control -
 - (i) Real or personal property of Terrence John Clark purchased with money obtained from illegal activities; or
 - (ii) Real or personal property received, whether directly or indirectly, from Terrence John Clark; or
 - (iii) Real or personal property into which property of Terrence John Clark has been converted or for which property of Terrence John Clark has been exchanged; or
 - (iv) Real or personal property obtained by means of money received, whether directly or indirectly, from Terrence John Clark:

AND WE DECLARE that, in this Our Commission -

- (f) The expression 'illegal activity' means an activity of Terrence John Clark, or a person associated with him, involving contravention of laws of the Commonwealth of Australia or of any of the States of New South Wales, Victoria and Queensland, including, in particular, laws relating to the importation, exportation, or possession of drugs; and

(g) The expression 'person connected with New Zealand' means -

- (i) A resident or citizen of New Zealand; or
- (ii) A body corporate that has at any time had an office or place of business in New Zealand, or an unincorporated body any of whose members has at any time been a resident or citizen of New Zealand:

And, in the course of the inquiry, you may have regard to evidence obtained by you in the course of your sittings in Australia pursuant to the powers conferred on you by the said Letters Patent issued to you by the Administrator of the Government of the Commonwealth of Australia and by the Governors of the States of New South Wales, Victoria, and Queensland:

And for the better enabling you to carry these presents into effect you are hereby authorised and empowered to make and conduct any inquiry or investigation under these presents in such manner and at such time and place as you think expedient, with power to adjourn from time to time and from place to place as you think fit, and so that these presents shall continue in force and any such inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby empowered to exclude the public from any hearing at which evidence is taken or at which submissions are made in relation to the evidence; but this power does not limit any of your other powers to hear proceedings in private or to exclude any person from any of your proceedings:

And you are hereby strictly charged and directed that you shall not at any time publish, save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, and save to His Excellency the Governor-General of the Commonwealth of Australia, and to their Excellencies the Governors of the States of New South Wales, Victoria and Queensland, the contents of any report so made or to be made by you, or any evidence or information obtained by you in the exercise of the powers hereby conferred on you, except such evidence or information as is received in the course of a sitting open to the public:

And We do further ordain that you have liberty to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient to do so:

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hand, not later than the 31st day of March 1983, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In Witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 3rd day of November 1982.

Witness The Honourable Sir David Stuart Beattie,
Knight Grand Cross of the Most Distinguished Order of
Saint Michael and Saint George, Companion of the
Queen's Service Order, one of Her Majesty's Counsel
learned in the law, Governor-General and
Commander-in-Chief in and over New Zealand.

DAVID BEATTIE
Governor-General

By His Excellency's Command -

R. MULDOON
Prime Minister

APPENDIX C

Allegations put to Terrence John Clark by the Commission

The following allegations were put to Clark:

1. that during the period 1976-1979 (hereinafter called the 'said period' Alexander James Sinclair (formerly Terrence John Clark) and associates organised and implemented the illegal importation into Australia of a large quantity of heroin (and other illicit drugs) and illegally distributed the same within Australia and received as a result large sums of money;
2. that the illegal importation of the said drugs during the said period was, in the main, carried out by Alexander James Sinclair and associates employing for that purpose a number of (mainly) female couriers who entered Australia as passengers alighting from aircraft arriving from various parts of the world with the heroin etc. concealed either in suitcases forming part of the couriers' luggage or secreted on their persons;

3. that Alexander James Sinclair and associates obtained the services of the said couriers by the payment of moneys for each illegal run, and by the provision, in the event of the apprehension of any such courier, by Customs or other relevant authority, of legal representation and advice, and moneys to facilitate the bailing of any such courier so as to enable such courier to unlawfully abscond;
4. that Alexander James Sinclair and associates themselves, as well as the couriers mentioned in paragraph 2 hereof. on numerous occasions were enabled to illegally depart and enter Australia in the course of their said illegal activities by the use of Australian passports unlawfully obtained and issued in the names of other persons so as to conceal the true identity of Alexander James Sinclair and associates and the said couriers;
5. that Alexander James Sinclair and associates on some occasions during the said period imported heroin into Australia by dropping the same from vessels off the coast of Australia to be collected by shore-based boats, e.g., in early 1977, from the vessel Konpira, captained by one John Chadderton, to a Bertram boat (with Alexander James Sinclair and others aboard) off the north coast of New South Wales;
6. that Alexander James Sinclair and his associates used the services of Brian Alexander, a Sydney law clerk employed by John Aston, solicitor, to unlawfully obtain confidential information in respect of Alexander James Sinclair and associates from law enforcement bodies generally and, in particular, from the Sydney office of the Federal Narcotics Bureau, which information was then provided by Brian Alexander to Alexander James Sinclair and associates in return for the payment of money;
7. that Alexander James Sinclair and associates had available to them the services of a corrupt officer or officers in one or all of the following organisations within Australia -

- (i) Customs
- (ii) Queensland Police
- (iii) Federal Narcotics Bureau
- (iv) New South Wales Police

who in return for the payment of money would pass on information then known to such organisation in respect of the activities of Alexander James Sinclair and associates; and, further, in the case of Customs, would knowingly permit the couriers, referred to in paragraph 2 hereof, to pass through Customs without hindrance or apprehension;

8. that a significant proportion of the moneys obtained by Alexander James Sinclair and associates from the sale of drugs mentioned in paragraphs 1 and 2 hereof, was unlawfully taken or transmitted overseas by various methods, including -

(i) couriers departing Australia with large amounts of cash secreted on their person or in their luggage;

(ii) the employment of the facilities of international financial institutions including Nugan Hand Ltd; and

that, in particular, on or about 26 March 1979 one of the said associates deposited with Sydney solicitor, John Aston (mentioned in paragraph 6 hereof), \$A260 000 in cash, which sum was thence deposited with Nugan Hand Ltd, thence transmitted to Singapore and paid to Choo Cheng Kui ('Chinese Jack') for heroin supplied to Alexander James Sinclair;

9. that the moneys mentioned in paragraph 8 or part thereof were transferred to various countries, e.g. from Singapore to Hong Kong, from Hong Kong to London, and to the United States of America, by means of the use of facilities of such international financial institutions as Bain & Co, Credit Suisse and banks in Hong Kong and Singapore;

10. that on Monday 29 May 1978, Alexander James Sinclair was given details by Brian Alexander, in Sydney, of information supplied by one Duncan Robb to officers of the Sydney Narcotics Bureau during the course of the preceding evening, which information included -
 - (i) the supplying of the name of Terrence John Clark as being the leader of a heroin ring then operating in Sydney;
 - (ii) the supplying of the names of Wayne Shrimpton, Gregory Ollard, Douglas Wilson and Judy Curtis, as being persons involved in Clark's drug ring; and
 - (iii) the decoded telephone number of the said Douglas Wilson;
11. that on or about 2 June 1978 Alexander James Sinclair and others assaulted the said Duncan Robb in a Sydney suburb, causing him serious bodily harm, on which occasion Alexander James Sinclair informed Robb that the reason for the assault was the supplying by Robb of the said information referred to in paragraph 10 hereof;
12. that between June 1978 and Easter 1979 Alexander James Sinclair became aware that Douglas and Isabel Wilson had supplied information to the Queensland Police in Brisbane in June 1978 concerning Alexander James Sinclair and his associates, and their illegal drug activities, and that such information was contained on tapes recorded by the Queensland Police in Brisbane;
13. that Alexander James Sinclair became aware of the information mentioned in paragraph 12 hereof by one or more of the following means -
 - (i) by actually obtaining from some person or persons the tapes themselves (or a copy thereof) in return for the payment of money to that person or those persons;
 - (ii) by obtaining a transcript of the content of the said tapes from some person or persons in return for the payment to such person or persons of money;

- (iii) by being told by some person or persons of the content of the tapes in return for the payment to that person or persons of money;
14. that as a result of Alexander James Sinclair receiving the information referred to in paragraph 12 hereof, he caused the Wilsons to be murdered near Melbourne on or about 13 April 1979;
15. that during the said period Alexander James Sinclair murdered a number of persons in New South Wales, including the following -

Gregory Ollard;
Julie Theilman; and
Harry Lewis.