

PRIVATE SECURITY OR PRIVATE POLICE?

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FOR THE YEAR ENDED 30 JUNE 1985 SOME 326 SECURITY GUARD LICENCES had been issued in the form of new licences or renewals of licences issued the previous year. For the same period there were 4130 certificates of approval issued for employees of security guard licence holders.

By the year ended 30 June 1992 security guard licences had more than doubled—to 690—in a period of just seven years. Interestingly, the number of certificates of approval had only risen from the previous 4130 to just 4245 (an increase of only 115 certificates) for the same period of time. A reason for this apparent aberration will be given later in this paper.

Regarding private investigators, as at 30 June 1987 there were fifty-seven substantive licences in existence, plus a total of sixty-six responsible employee certificates.

By 30 June 1992 (a period of just 5 years) there had been a 75+ percentage increase with this figure rising to 103, and a massive 185 percentage increase in responsible employee certificates, with these now numbering 190.

It must be remembered, however, that these figures only reflect the number of *licensed* security guards and private investigators as well as the number of *certificate* holders who have chosen to "do the right thing" and obtain the relevant licence and/or certificate as they are required to do under the provisions of the Private Investigators and Security Guards Act 1974.

As to the number of unlicensed security guards and private investigators currently operating in New Zealand one can only guess. A guide to the level of illegal operation is that one-fifth of the supposedly "Licensed Private Investigators" advertising in the current Wellington Yellow Pages Directory do not hold a current private investigator's licence.

Add to that the number of "fly-by-night" operations and it can be suggested that there could quite easily be half as many again of the total number of licensed private investigators operating without licences. It is also my opinion that a similar situation exists in the security guard industry.

That is not all, however. The provisions of the Private Investigators and Security Guards Act 1974 apply only to security guards and private investigators "plying for hire" as it were, and does not include "in-house" investigators and/or security guard operations.

Therefore, there are quite a substantial number of people working in the security industry, and as investigators for large corporations (for example, Telecom), financial institutions and government departments, (for example, Agriculture and Fisheries).

In all probability, it is likely that there are as many unlicensed and uncertificated employees in the security industry as there are licence and certificate holders, albeit some of the former group are not required by law to hold a licence or certificate.

Police numbers have recently increased, due to their amalgamation with the Traffic Safety Service (not forgetting Government's promise of 900 extra police during their first term of office), but it is still very likely that the number of people employed in the private security and investigating industries in New Zealand exceed in total the current number of employees of the Police Department.

Does this mean that there are in fact two "police" agencies in New Zealand? To some extent the answer is "yes" and to some extent the answer is "no". So long as we live in a democratic society, with all the advantages and disadvantages that provides, we will always have the need for a public police presence. However, as the role, function and priorities of the public police changes to respond to the dictates of a democratic society a gap is going to appear (if it has not already) between what services the public police can and cannot (or will not) provide.

When I joined the New Zealand Police in January 1961 it was still then the function of the police to monitor intruder alarm systems and to supervise the carriage of some valuable goods such as bullion. These are two security operations that are now no longer identified as being "police" type functions and are being provided by the private security industry in New Zealand, as they are in most parts of the world.

Not many would disagree with the public police divesting themselves of these tasks so that they can better police New Zealand. However, how far should they go in divesting themselves of what are often seen as traditional police-type duties to the extent that the "crime pays" phrase becomes truly commercial?

Property crime is most probably the area where the public police are currently most criticised and, to some extent, justifiably. Property crime includes all forms of fraud and theft, burglary, vehicle theft and unlawful taking, and so on.

The public police have, over recent years, developed a strategy of prioritising their responses to crime with a heavy priority on crimes of violence. So as long as words like Aramoana and Paerata and phrases such as "child abuse" and "domestic violence" are repeated, that will have to remain a priority.

The public police have, to some extent, either under-prioritised, or actually prioritised-out, their response to a substantial amount of property crime, and in doing so have shown a lack of understanding of the effect property crime has on its victims. Violent crime is of course to be abhorred, but if one talks to victims of property crime, one can often find that the

trauma of an incident of "property crime" is virtually as devastating as actually being physically assaulted.

To the year ended 31 March 1990, violent offences actually fell by 6 per cent (*Evening Post*, Wellington, 20 June 1990). But in that same year dishonesty offences (which are principally property offences) increased by 5 per cent and made up more than 63 per cent of all reported offences. In that same year the public police clearance rate for all crime dropped to just below 43 per cent.

For the year ended 30 September 1992 the picture is even worse. There has been a 12.5 per cent increase in offences of violence since the 20 June 1990 figures and dishonesty offences now make up just over 70 per cent of all reported offences. However, the public police clearance rate is down to 35 per cent—an 8 per cent decrease in just two and a half years.

The Commissioner attributed the low clearance rate to ". . . staff on annual leave and those who had accumulated time off . . ." and the Minister of Police responded by stating that ". . . the community would be called on to play a bigger part in reducing crime . . ." (*Evening Post*, Wellington, 21 November 1992). As the security and investigating industries obviously see themselves as part of the community, they will no doubt be very supportive of the Minister's remarks.

But is not the community already playing a substantial part in trying to reduce crime and in generally providing a non-police response to crime? We see the public police driving around in patrols cars emblazoned with advertising material, but certainly the provider of the car is getting his money's worth by way of the publicity.

We have not yet reached the stage of the public police holding raffles in the local tavern to raise funds for a new cellblock, but just how far does the Commissioner, the Minister and the Government, expect the public to go to support the public police, not just from a philosophical and moral standpoint, but by actually providing hard-earned cash to buy cars, cellular phones and the like?

The public police cannot blame private sector business entrepreneurs for jumping on the bandwagon of police commercialism, but it is of concern that by allowing this to happen, the public police could allow themselves to be accused of prostituting their services. It is therefore not surprising that there has been such a tremendous growth in the private security and investigating industries over recent years.

Unlike our fictional counterparts and, to some degree, our real-life counterparts in some countries (notably the USA), private investigators rarely (if ever) become involved in investigating crimes of violence in New Zealand. However, we do get quite heavily involved in property crime and crimes of dishonesty to the extent now that it is not unusual for a complainant, on first broaching his complaint with the police, to be advised to seek the assistance of a company such as Morley Security Group Ltd to assist in putting the evidence together before the public police will become involved. Typical cases can involve theft and other acts of dishonesty by employees in retail, expenses fraud by sales executives, insurance fraud and a wide range of other types of property crime. In-house investigators for large corporate bodies are

obviously involved in investigating a much wider range of deviant behaviours. The security guarding industry is responsible for literally the safety and security of millions of dollars worth of real estate, buildings, valuables, and so on, every day of the year.

But all these private sector security and investigative services have to be paid for, which raises the very important question of "user pays" and, as regards property crime and crimes of dishonesty, are we reaching a stage where the resolution of these types of crime will be on a "user pays" basis? Will it also mean that only those who can afford to employ security guards and/or private investigators will be able to have their complaints resolved to their satisfaction?

Another aspect of private sector involvement in the resolution of property crime is that if an organisation is paying to have the matter investigated then they may feel that they have some "right" to be involved with the ultimate decision of how the case is finally handled. If this is so, then we may well see complainants "taking the law into their own hands" to ensure that the decision is to their liking. Organisations who have been defrauded by an employee are now choosing to resolve the investigation entirely "in-house" with no recourse at all to the public police or to our public system of justice. This does not augur well for the administration of law and order and the principles of "natural justice" for the future.

A less sinister course being taken by some complainants, but one which the public police would do well to reflect on, is that of aggrieved parties either taking their own criminal prosecutions or choosing not to report the matter to the public police and using other methods of legal representation to have the matter dealt with through the courts.

A very simple example of this is that we were recently asked by a retail client to investigate the practicalities of engaging a solicitor to institute a private prosecution for a case of shoplifting. The matter had been initially dealt with by the police, but our client was, to say the least, extremely disappointed with the action the police took.

Other, more serious, cases involve fraud on at least one government department whom we act for and they, at this stage, have opted not to report any of their fraud cases to the public police, but rather to proceed with alternative legal representation and to virtually conduct their own criminal prosecutions.

The extent to which the private security industry, and private investigators, are and can be involved in the day-to-day lives of ordinary New Zealanders is quite extensive. The former are involved in providing physical manpower services at sporting events and rock concerts, guard buildings and take money to and from automatic teller machines.

Private investigators can be involved in querying the authenticity of a house burglary insurance claim, checking the references provided for a new job and covertly observing one's work habits (for a variety of reasons).

Considering the nature of the services these industries provide, and the impact they could have on the average citizen, and the extent to which these businesses are growing, why is it then that the public police have no regard

for ensuring that the people employed in this type of work conform to the law that regulates that employment?

Earlier in this paper the large numbers of unlicensed individuals working in the security and private investigating industries was noted. It is a well known fact that the public police are just not interested in investigating and prosecuting breaches of the Private Investigators and Security Guards Act 1974. The following quote comes from Inspector Honan, National Coordinator, Crime Prevention, Police National Headquarters:

. . . Regulatory offences take a low priority. The PISG Act falls into that category. We make no secret of the fact that we do tend to look at that as of low priority . . . (Honan 1992)

That might be all very well, but it certainly did not stop the Wellington City Police recently raiding a Chinese gambling den for illegal gambling, or the Lower Hutt Police crash-banging their way into an unlicensed club to catch a few illegal tipplers.

Curiously enough, in some instances the penalties for breaches of the Private Investigators and Security Guards Act 1974 (which include terms of up to 3 months imprisonment upon conviction) are, in some cases, more severe than the penalties under the Gaming Act and the Sale of Liquor Act.

There have been a number of people within the industry, who, in an endeavour to try to have the provisions of the Private Investigators and Security Guards Act 1974 enforced, have made complaints to the police. In some instances those complaints have been made to the Minister of Police: all to no avail.

That being the case, and with the obvious impunity with which people are setting themselves up as unlicensed security guards and unlicensed private investigators, the public police cannot now complain—as some are—about the extent to which these industries are being seen to encroach on what have traditionally been public police tasks.

Not only that, these industries, and the clients for whom they work, are, in light of a negative public police response to (particularly) property crime and crimes of dishonesty, are now choosing to resolve their investigations other than by deferring to the public police and, in some instances, by resolving them outside the criminal justice system.

It was not too long ago that drivers and crew in armoured security vans carried firearms, whereas the public policeman pounding the beat did not. Thankfully that situation has now changed and firearms have been withdrawn from private sector security guards. Equally thankfully the public police remain basically an unarmed service.

But as the public police withdraw from responding to property crime and this area is taken over increasingly by the private sector we have a situation where, in fact, the security guard who first arrives at the scene of a burglary is very much acting as a de facto member of the public police. The chances, therefore, of that security guard coming face to face with an armed intruder have increased dramatically in line with the inability of the public police to respond in the first instance to intruder alarm activations.

What is the lawful ability of a security guard to carry a baton as a weapon of self-defence? My understanding of the current law is that he cannot carry a baton, as it would be classified as an "offensive weapon". Certainly this was the interpretation of the law during my last correspondence on the matter with Police HQ (Legal Section). But should not the security guard, in such a situation, be lawfully entitled to carry a baton? After all, it is he, not a member of the public police, who is more likely to confront an intruder at the scene of a burglary.

To extend that argument, in light of the duties many security guards carry out in protecting public places and property, should not all security guards be allowed to carry batons? The security guard in the former situation has a very good moral and practical argument to support his carriage of a baton, but maybe not in the second scenario.

Irrespective of that, and whether security guards carry batons or not and whether or not they have no more powers than an ordinary citizen, they can pose the threat of a private police force which the public police, government and our society in general would do well to consider.

What is the situation concerning private investigators? It could be argued that the activities of unlicensed private investigators could pose a greater threat than that of unlicensed security guards. This threat is compounded by an Act woefully out of date (it was passed in 1974) and by the public police who choose to ignore and, indeed, wilfully fail to prosecute offences under that legislation.

It is also compounded by a government, in a pitiful effort to extract more and more money by way of indirect taxes from the private sector, which has increased the licensing fees for security guards and private investigators, and their employees.

Prior to the increase, government revenue from the industry was around the \$400,000 p.a. mark—now it is over \$660,000 p.a. However, and this is something the government does not appreciate—it could be a great deal more if only they would enforce the licensing provisions of the Act.

At the beginning of the paper the seemingly slight increase in security guard certificates issued between 1985 and 1992, as compared with the number of substantive licences was referred to. Explanations for this include the size of the increase in fees, and because many guards found it more worthwhile to operate their own businesses and have their own licences, as opposed to working under a certificate as a responsible employee.

However, there are those who have merely chosen to carry on working as a security guard or a private investigator without a licence, in the full knowledge that neither the government nor the public police is interested in either a loss of revenue or a breach of the law.

In the case of an unlicensed private investigator there is an even greater advantage, in that being unlicensed they are not hidebound by the restrictions imposed by Section 52 of the Private Investigators and Security Guards Act 1974 that licensed investigators have to contend with.

As the private investigation and security industry grows—as it obviously will—and as increasing numbers of people choose to seek the resolution of some of their problems through the medium of the services those industries

provide, then we run a real danger of there arising a public police and a private police.

The former will become involved in investigating major crimes of violence and matters of public order, and will be funded increasingly by the private sector. But that funding will only go so far, and despite the "salving of the conscience" that such expenditure might produce in the mind of the donor, such largesse has a limit.

Those that can afford it—and that is the real danger—will, to "get their pound of flesh" or for whatever other reason, increasingly seek the services of private investigators. They will also choose to resolve their problems within their own organisations or certainly without the involvement of the public police.

Crime, indeed, pays.

References

Honan, Inspector R. 1992, *Listener & TV Times*, 28 November.