

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
LAKE ALICE CHILD AND ADOLESCENT UNIT INQUIRY HEARING**

Under The Inquiries Act 2013

In the matter of The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Royal Commission: Judge Coral Shaw (Chair)
Ali'imua Sandra Alofivae
Mr Paul Gibson

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Mr Michael Heron QC for Dr Janice Wilson
Ms Frances Everard for the New Zealand Human Rights
Commission
Mr Hayden Rattray for Mr Selwyn Leeks
Mr Eric Forster for Victor Soeterik
Mr Lester Cordwell for Mr Brian Stabb and Ms Gloria Barr
Mr Scott Brickell for Denis Hesseltine
Ms Anita Miller for the Medical Council

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
414 Khyber Pass Road
AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

INDEX

MR AA	
Questioning by Ms Joychild	605
Questioning by Commissioners	614
CHARLES MAURICE SYMES	
Questioning by Ms T Thomas	618
Questioning by Commissioners	626
ALEyna MARY HALL, DAVID PETER DUNBAR	
Questioning by Ms Miller	629
Questioning by Mr Molloy	637
Questioning by Ms Joychild	652
VICTOR FREDERIK WILLEM SOETERIK	
Questioning by Mr Forster	654
Questioning by Mr Molloy	674
Questioning by Ms Joychild	685
Questioning by Commissioners	689

1 comment that if they did read the medical file they would be aware of that heart problem.

2 **CHAIR:** That's a very important point. Thank you very much for bringing it to our attention.

3 Thank you.

4 **MS A THOMAS:** Tēnā koe Charlie.

5 **CHAIR:** We'll take the adjournment. [Applause]

6 **Adjournment from 11.42 am to 1.19 pm**

7 **CHAIR:** Good afternoon Mr Molloy.

8 **MR MOLLOY:** Good morning ma'am, we have two witnesses here from the Medical Council,
9 and I'm going to hand over to my colleague.

10 **MS MILLER:** Good afternoon ma'am.

11 **CHAIR:** Good afternoon.

12 **MS MILLER:** My name's Ms Miller and I appear with the witnesses for the Medical Council.

13 **CHAIR:** Welcome, Ms Miller, to the Commission.

14 **MS MILLER:** Thank you.

15 **CHAIR:** We'll start -- I understand that somebody, either of these people wish to make a
16 statement.

17 **MS MILLER:** That's correct.

18 **CHAIR:** But we'll wait for the affirmation and then proceed after that, does that suit you?

19 **MS MILLER:** That would be great, thank you.

20 **ALEYNA MARY HALL, DAVID PETER DUNBAR**

21 **CHAIR:** Good afternoon to Ms Thomas and --

22 **MS MILLER:** It's Ms Hall and Mr --

23 **CHAIR:** Shall I start looking at the right piece of paper, I know perfectly well you're not Ms
24 Thomas, you're Ms Hall and Mr Dunbar, welcome to you both. And I'm going to ask you if
25 you would do a dual affirmation, I'll read it to you and ask you if you would agree. Do you
26 both solemnly, sincerely and truly declare that the evidence you give to the Commission
27 will be the truth, the whole truth and nothing but the truth?

28 **MR DUNBAR:** I do.

29 **MS HALL:** I do.

30 **CHAIR:** Thank you. Yes Ms Miller.

31 **MS MILLER:** If Ms Hall could take this opportunity to read the statement on behalf of the
32 Medical Council.

33 **CHAIR:** Perhaps just identify who you are for the record.

34 **QUESTIONING BY MS MILLER:** I can certainly do that ma'am.

1 Could you please confirm that your full name is Aleyna Mary Hall?

2 **MS HALL:** Yes, it is.

3 **MS MILLER:** And you've been employed by the Medical Council since 2015 initially as Senior
4 Legal Advisor then as its Deputy Registrar from 2017 and you're appointed as the deputy
5 CEO in April 2020?

6 **MS HALL:** That's correct.

7 **MS MILLER:** Thank you. And would you also like to introduce Mr Dunbar?

8 **CHAIR:** Yes.

9 **MS MILLER:** Thank you. Could you please confirm that your full name is David Peter Dunbar?

10 **MR DUNBAR:** That's correct.

11 **MS MILLER:** You are the registrar of the Medical Council and you've been in that role since
12 February 2009?

13 **MR DUNBAR:** That's correct.

14 **MS MILLER:** Thank you. Ms Hall if you could now read the statement for the Medical Council.

15 **MS HALL:** Ahakoa he iti he pounamu, he whakapaha tēnei. Although small, it is valuable, it is
16 an apology. To the survivors of the Lake Alice Child and Adolescent Unit, the Medical
17 Council is sorry. We want to acknowledge the pain and suffering of all survivors who
18 experienced abuse while in State care, including those at Lake Alice Hospital. The Medical
19 Council acknowledges the hurt that you have experienced and apologises for any actions
20 that the Medical Council of the time should have taken but did not.

21 Due to the length of time that has passed, since the complaints about Dr Leeks were
22 made, and the incompleteness of the records which are available, it is with regret that the
23 current Medical Council is unable to provide reasons for the decisions that were made in
24 the past in relation to complaints of abuse or in relation to Dr Leeks.

25 The Council accepts that some complainants have been dissatisfied and
26 disappointed with those decisions and it sincerely apologises for any hurt that has occurred
27 as a result.

28 The current Medical Council of New Zealand has asked me to convey its clear and
29 absolute position that it strongly condemns misconduct by any doctor that results in harm to
30 patients or to the public. Thank you.

31 **CHAIR:** Thank you Ms Hall.

32 **MS MILLER:** Thank you. Ms Hall, can I please confirm that you have a copy of your statement
33 dated 22 April 2021? I'll give the reference for that. WITN0275002.

34 **MS HALL:** Yes, I do thank you.

1 **MS MILLER:** And a copy of your 14 May 2021 statement which is WITN0275023 in front of
2 you?

3 **MS HALL:** Yes, thank you.

4 **MS MILLER:** And am I right in saying that your evidence, and in particular any evidence
5 relating to complaints and other matters relating to Dr Leeks, is based on information that
6 Medical Council staff have been able to locate in response to requests from this Royal
7 Commission?

8 **MS HALL:** That is correct.

9 **MS MILLER:** And Mr Dunbar, can I just get you to confirm please that you also have a copy of
10 your witness statement dated 22 April 2021?

11 **MR DUNBAR:** I do have a copy.

12 **MS MILLER:** For the Commission, that's WITN0276002. And Mr Dunbar, for the purpose of
13 preparing your evidence, you have reviewed the relevant repealed legislation and in
14 particular the Medical Practitioners Act 1968 and also the Medical Practitioners Act 1995?

15 **MR DUNBAR:** Yes.

16 **MS MILLER:** How familiar are you with that earlier legislation?

17 **MR DUNBAR:** For the purposes of preparing the statement I gave fairly close attention to the
18 processes and procedures laid out in the legislation. I believe I have a got working
19 knowledge of those procedures and understand their import.

20 **MS MILLER:** Thank you. And if you are asked you would be able to also comment on the
21 current legislation, the Health Practitioners Competence Assurance Act 2003? [**Speed and**
22 **mic issue**] I'll ask again. If you're asked, are you able to comment on the current
23 legislation, the Health Practitioners Competence Assurance Act 2003?

24 **MR DUNBAR:** Yes, I'm very familiar with that legislation.

25 **MS MILLER:** Thank you. I'll turn first to you, Ms Hall. The statement that you prepared in
26 April 2021, and I'll ask the Commission, would you like me to continue to refer to the
27 document number? Happy to do so.

28 **CHAIR:** Sorry, no, you don't have to refer to that, that's in the statement.

29 **MS MILLER:** Thank you. In the statement that you prepared on 22 April at paragraph 7 you
30 refer to a request by the Royal Commission to provide information about all complaints
31 against Dr Leeks from the time that he was registered as a medical practitioner until the
32 date of your statement and in your statement you say that you are able to identify three
33 complaints. I just want to touch on each of those.

34 So the first complaint I will refer to as the 1977 complaint. Your evidence at

1 paragraph 11 to 12 of your statement is that that complaint was made to the Ministry of
2 Health and subsequently considered by an Ethics Committee of the Medical Association
3 and that Ethics Committee then referred the complaint to the Medical Council for
4 investigation, is that right?

5 **MS HALL:** That is correct.

6 **MS MILLER:** Are you able to briefly explain, based on the information that you have seen, what
7 then happened, what process was then followed?

8 **MS HALL:** So from a review of the information that we do have available to us, the Secretary of
9 the Medical Council then made contact with the Convenor of our Penal Cases Committee.
10 That Committee then made contact with Dr Leeks informing them -- him, sorry, that a
11 complaint had been made. It attached a letter or a notice setting out the substance of that
12 notification and Dr Leeks responded to that Committee providing information about the
13 complaint and requested that he be heard in relation to that complaint.

14 **MS MILLER:** Were you able to locate any other information or any other records about the Penal
15 Cases Committee investigation?

16 **MS HALL:** No, we were not.

17 **MS MILLER:** In the opening submissions made by Counsel Assisting the Royal Commission, it
18 was said that the 1977 complaint resulted in a charge being brought to the Medical Council
19 which then came to nothing. Based on the information that you've been able to locate about
20 that 1977 complaint, was a charge laid with the Medical Council in relation to that
21 complaint?

22 **MS HALL:** No, no charge was laid with the Medical Council.

23 **MS MILLER:** And were you able to locate any information about the reasons for the Penal Cases
24 Committee's decision?

25 **MS HALL:** No, we were not.

26 **MS MILLER:** Are you able to explain why the records relating to that investigation and the
27 outcome of that investigation are incomplete?

28 **MS HALL:** All I can say probably in relation to that was information at that time back in 1977
29 was all stored in hard copy, so there was no electronic technology that allowed us to store
30 that in a digitalised form. All information was stored and then sent to archives, which was
31 TIMG, and remained at archives, so I can't really provide any further information than that
32 I'm sorry.

33 **MS MILLER:** Thank you. Mr Dunbar, in your April statement at paragraph 42(a), you say that
34 the Medical Practitioners Act 1968 would have applied to that 1977 complaint. And based

1 on the information that is available, are you able to comment on whether or not the process
2 that was followed in response to that complaint was consistent with the provisions of the
3 1968 Act?

4 **MR DUNBAR:** Yes, based on my understanding of the 1968 Act the information that Ms Hall has
5 in her statement about that complaint appears entirely to have been dealt with consistently
6 with the Act.

7 **MS MILLER:** Thank you. Ms Hall, the second complaint that you refer to in your statement,
8 your April statement, this is at paragraph 15, is the January 1999 complaint.

9 **CHAIR:** Can I just interrupt here for a moment. I know we're not allowed to use names, but I
10 think it's important for us to know by whom the complaints were made, not the name of the
11 person. I think reading from this it was a survivor who had -- a survivor of Lake Alice who
12 made the first complaint; is that correct?

13 **MS HALL:** That is correct.

14 **CHAIR:** Okay, if you just say in general terms who made the complaint that would be helpful.

15 **MS HALL:** Okay.

16 **MS MILLER:** Are you able to comment on whether you know if the complainant in 1999 was a
17 survivor at Lake Alice?

18 **MS HALL:** I do not know.

19 **MS MILLER:** Are you able to briefly explain then what steps were taken by the Medical Council
20 in response to that complaint in 1999?

21 **MS HALL:** From that information that was available a Complaints Assessment Committee was
22 established by the Medical Council to investigate that complaint.

23 **MS MILLER:** And do you know what decision was reached by the Complaints Assessment
24 Committee?

25 **MS HALL:** The Complaints Assessment Committee made the decision to take no further action
26 and I think that letter is attached to my statement of evidence.

27 **MS MILLER:** Mr Dunbar, in your evidence you say that the Medical Practitioners Act 1995
28 applied to the 1999 complaint, and again based on the information that is available, are you
29 able to comment on whether or not that process followed for the 1999 complaint was
30 consistent with the requirements of the 1995 Act?

31 **MR DUNBAR:** I can. The process followed, including the referral to a Complaints Assessment
32 Committee, was consistent with the 1995 Act.

33 **MS MILLER:** The third complaint, Ms Hall, you were specifically asked by the Royal
34 Commission about a complaint made by an individual in 1991 and your evidence is that the

1 Medical Council has no record of a complaint in 1991. Were you able to uncover any
2 information at all about that complaint?

3 **MS HALL:** Yes, I was. So as part of our inquiry, I spoke to Ms Gay Fraser, who was formerly
4 the secretary of the Medical Practitioners Disciplinary Committee, and she reviewed
5 documents that she had access to from 1991 and advised that that Medical Practitioners
6 Disciplinary Committee had received a complaint against Dr Leeks from an individual
7 identified with the same name.

8 **MS MILLER:** And did you obtain any information at all about the nature of the complaint
9 against Dr Leeks?

10 **MS HALL:** No, there was no information as to the nature of the complaint. The information that
11 was available said that the Chair of that time of the Medical Practitioners Disciplinary
12 Committee, found that the information was not sufficient and it went no further.

13 **MS MILLER:** And a question for both of you, the Medical Practitioners Disciplinary Committee,
14 was that a committee of the Medical Council?

15 **MR DUNBAR:** It was a committee established separately under the legislation in 68 and in 19 --
16 1968 legislation and the earlier legislation in the 1950s it was not set up by the Council or --
17 and membership was not created by the Council.

18 **MS MILLER:** And Mr Dunbar, in your evidence you say the 1968 Act would have applied to
19 that complaint in 1991. On the basis of the information you do know, are you able to
20 comment at all on whether the way in which it was managed was consistent with the 1968
21 Act?

22 **MR DUNBAR:** It would appear so.

23 **MS MILLER:** Ms Hall, were you able to identify any other complaints against Dr Leeks?

24 **MS HALL:** No, we were not. No, I was not sorry.

25 **MS MILLER:** Ms Hall, you also provided a statement in May 2021 which was prepared in
26 response to a request from the Commission in relation to the UN Committee Against
27 Torture report into a complaint by Paul Zentveld. And that report refers to a complaint by
28 Mr Zentveld to the Medical Council in 2010. Were you able to locate a copy of a
29 complaint by Mr Zentveld?

30 **MS HALL:** No, I was not.

31 **MS MILLER:** Was there any information held by the Medical Council about a complaint being
32 made by him?

33 **MS HALL:** The only information I was able to find was a newspaper article from 2005 that
34 referred to Mr Zentveld preparing a complaint.

1 **MS MILLER:** And just more generally on the UN Committee's report, it appears it was issued in
2 January 2020. When did you first become aware of the UN Committee's report?

3 **MS HALL:** When the Commission asked for comment on that.

4 **MS MILLER:** So as far as you're aware, was the Medical Council itself aware of the UN
5 Committee's investigation at the time that it was undertaken?

6 **MS HALL:** Not as far as I am aware.

7 **MS MILLER:** And did it participate in that process?

8 **MS HALL:** No.

9 **MS MILLER:** Ms Hall, I also want to address the cancellation of Dr Leeks' legislation in
10 September 1999 which you also refer to in your witness statement of 14 May. The UN
11 Committee's report and others giving evidence to the Royal Commission suggest that the
12 Medical Council had refused to take action against Dr Leeks by accepting the cancellation
13 of his registration. I just want to ask you if it's correct to say that the Medical Council had
14 accepted cancellation of Dr Leeks' registration in September 1999?

15 **MS HALL:** No, that is incorrect. Dr Leeks' name was removed from the register as he had been
16 out of New Zealand for a period longer than three years, and I understand that under
17 previous legislation it was mandatory for the Council to remove him from the register.

18 **MS MILLER:** And as far as you're aware, did Dr Leeks make an application to remove his name
19 from the register?

20 **MS HALL:** No.

21 **MS MILLER:** Are either of you able to comment on the Medical Council's jurisdiction, its ability
22 to consider a complaint against a doctor when that doctor is no longer registered with the
23 Medical Council?

24 **MR DUNBAR:** I can do so. Under the current Act, the Health Practitioners Competence
25 Assurance Act, removal from the Medical Council's register does not affect the doctor's
26 liability for any wrongdoing before the date of removal. The current Act, that's the Health
27 Practitioners Competence Assurance Act, particularly allows the Health and Disability
28 Commissioner and also the Council to consider complaints against a doctor's registered
29 under an earlier registration Act, such as the 1968 Act or the 1995 Act, unless there had
30 been some inquiry or investigation commenced under that earlier legislation into that
31 matter.

32 That could extend also to consideration by a Professional Conduct Committee and
33 that's established under the current Act, so this could extend to consideration by a
34 Professional Conduct Committee and the potential laying of a charge by that Committee,

1 again if the earlier legislation or the earlier Act would have allowed a laying of a charge.

2 I do understand that evidence has been given by another witness to this Inquiry,
3 about earlier correspondence from the Medical Council which advised that the Council had
4 no jurisdiction to consider under the current Act a complaint about Dr Leeks' practice,
5 because Dr Leeks was no longer registered.

6 This would have been correct in relation to matters, or to complaints that had been
7 previously considered or investigated. The Council does not have jurisdiction to
8 reinvestigate such matters. It would also have been correct if it was in reference to
9 systemic organisational inquiries. The Medical Council does not have the authority or the
10 ability to initiate inquiries into systems and organisations. That is the role of the Health and
11 Disability Commissioner.

12 However, I do acknowledge that it was not correct to say that the Medical Council
13 had no jurisdiction to investigate matters simply because Dr Leeks was no longer on the
14 register. So on behalf of the Medical Council I do want to apologise for that earlier
15 incorrect advice being given.

16 More correctly for matters that have not been previously investigated by the
17 Medical Council, the jurisdiction of the Health and Disability Commissioner and of the
18 Council is continued.

19 **MS MILLER:** Thank you. Ms Hall, in your evidence you also refer to a certificate of good
20 standing. That was issued to Dr Leeks in 1977. Were you able to find any information
21 about the steps taken by the Medical Council at that time?

22 **MS HALL:** No, sorry, I was not. There was no staff members available that had been there in
23 1977 to talk to either in relation to that.

24 **MS MILLER:** And Mr Dunbar, as registrar, are you able to comment on what, if any, current
25 process there is for issuing a certificate such as a certificate of good standing?

26 **MR DUNBAR:** A Certificate of Professional Status, or previously called a Certificate of Good
27 Standing, is a commonly used document internationally about exchanging information
28 between one regulator and another regulator about the standing of a doctor who is seeking
29 to be registered in the second regulator's jurisdiction. The Medical Council expects doctors
30 seeking registration in New Zealand to provide a certificate of professional status, similarly
31 an overseas jurisdiction would expect to receive one from us.

32 These certificates commonly communicate such information as are there any current
33 proceedings, perhaps relating to competence or conduct or health, are there any conditions
34 or orders in place ordered by the Medical Council, or are there any orders or previous

1 orders from the Health Practitioners Disciplinary Tribunal. If they were previously pressed
2 for a Certificate of Good Standing and there were an investigation underway, or there was
3 some previous order of a tribunal or council, that certificate would not have been issued.

4 **MS MILLER:** Thank you. I don't have any further questions to lead from these witnesses. I can
5 hand over to my colleague.

6 **CHAIR:** Thank you. Yes Mr Molloy.

7 **QUESTIONING BY MR MOLLOY:** Thank you ma'am. Thank you both, I'm Andrew Molloy,
8 Counsel Assisting the inquiry. Thank you for coming. I'm going to ask some questions,
9 pretty much along the lines that have already been led and perhaps elaborating on some of
10 the correspondence, Ms Hall, I think you in particular have exhibited which is very helpful.

11 To some extent I'm going to use you as instruments rather than asking you to
12 comment on the content of the correspondence, so forgive me for that. I'll also try and
13 outline my understanding of the processes, and obviously if there's anything I get wrong,
14 please feel free to tell me what you think the process was.

15 **CHAIR:** If I can just say, because this is probably going to be reasonably technical, please have
16 the mercy on our stenographers and speak as slowly as you can make yourself.

17 **MR MOLLOY:** Hopefully we'll make it as non-technical as possible, there's quite a lot of
18 correspondence I think has been referred to and I think it's self-explanatory along the way,
19 so it just gives a bit of colour to the process that's been described.

20 So I think we can confirm there are three known complaints about Dr Leeks. I can
21 confirm, ma'am, that all three do relate to survivors of Lake Alice.

22 **CHAIR:** Thank you.

23 **MR MOLLOY:** The first was the 1977 one. I think, Mr Dunbar, under section 40 of the 1968
24 Medical Practitioners Act, there was a Medical Practitioners Disciplinary Committee, is
25 that right?

26 **MR DUNBAR:** Yes.

27 **MR MOLLOY:** And effectively their function was set out in section 43 and colloquially it was
28 essentially to inquire into the charge made by any person against a person who was a
29 registered medical practitioner. And I think, Ms Hall, you helpfully set out at one point in
30 one of your statements there were essentially three categories of complaint.

31 **MS HALL:** Correct.

32 **MR MOLLOY:** Conduct unbecoming a doctor.

33 **MR DUNBAR:** Yes.

34 **MR MOLLOY:** Professional misconduct, and then I think the most serious was the third, I'll just

1 get the wording right, disgraceful conduct in a professional respect.

2 **MR DUNBAR:** That's correct.

3 **MR MOLLOY:** And I think the two less serious charges were considered by the disciplinary
4 Committee?

5 **MR DUNBAR:** That's correct, although the matters unbecoming did get often referred to a
6 Divisional Disciplinary Committee of the Disciplinary Committee.

7 **MR MOLLOY:** I think the first, the 1977 complaint was eventually categorised as the third,
8 disgraceful conduct in a professional respect. So in that respect it went to the Penal Cases
9 Committee that you referred us to?

10 **MS HALL:** Correct.

11 **MR MOLLOY:** I think that was a separate entity separate from the Medical Council?

12 **MS HALL:** Correct.

13 **MR MOLLOY:** A panel of three?

14 **MR DUNBAR:** Yes.

15 **MR MOLLOY:** Two doctors I think appointed by the Medical Council?

16 **MR DUNBAR:** That's correct and a lawyer.

17 **MR MOLLOY:** And a lawyer?

18 **MR DUNBAR:** Yes.

19 **MR MOLLOY:** Okay, and under section 56 of that Act the convenor of that Committee is
20 required to investigate the complaint and determine whether any whether any further action
21 should be taken. And in order to do so, it would have to notify the subject of the complaint,
22 and that I think it was described that was done and there was I think at some point a
23 meeting at which Dr Leeks appeared in person. So what we'll go through now is the
24 correspondence that you've exhibited which gets us to that point.

25 If we can just call up the first of those which I think is 0275009. It will come up on
26 your screens shortly. This is a letter, I think, from Dr Stanley Mirams, it's dated 22 June
27 there. As you can see it's from the Department of Health. It's addressed to Dr W J Pryor,
28 Chairman of the Ethical Committee, New Zealand Medical Association. If we flip to the
29 end of the letter we'll see the signatory is Dr Mirams who was at that time the Director of
30 the Division of Mental Health.

31 What we'll do is go firstly to a document that he attaches to that letter. What he's
32 sending to Dr Pryor is a note of his interview with the survivor who made the complaint.
33 And you'll see down towards the bottom of the page there's a paragraph numbered 4. That's
34 the fourth of four allegations I think that the survivor makes about Dr Leeks. I'm just going

1 to focus on that one because it's the one that eventually gets through. It goes as far as it can
2 with the process.

3 So Dr Mirams has noted that the boy concerned "alleges that on one occasion he
4 and four or five other boys told Dr Leeks about how they had been forced by stand-over
5 tactics to engage in homosexual activities with another patient who was an older and bigger
6 boy. Dr Leeks is then said to have told the boys to bring the ECT machine and follow him
7 and had taken them together with the alleged culprit into the treatment room where he was
8 held down by another boy and each in turn was allowed by Dr Leeks to give him painful
9 shocks using the ECT machine.'

10 So coming back to the letter itself, if we can just call out the first paragraph of the
11 letter. We'll see that Dr Mirams is informing Dr Pryor that he's enclosing the notes of the
12 interview. He says, "I think the notes are largely self-explanatory and I pass them to you
13 for consideration of their importance as a matter of ethical and conceivably disciplinary
14 investigation."

15 So we'll continue to explore the correspondence and how the allegation is then dealt
16 with. So it appears that after receiving that letter Dr Pryor sought a response from Dr Leeks
17 which was forthcoming and that's document 275010 which will come up shortly. We can
18 see here that the response is on the letterhead of the Palmerston North Hospital with the
19 subtitle the "Manawaroa Centre for Psychological Medicine". It's addressed again to
20 Dr Pryor and it's dated July 1977. And Dr Leeks outlines his preliminary response to the
21 complaint forwarded by Dr Mirams.

22 Again, we'll go, I think, to page 2 of that letter, the third paragraph there, again
23 focuses on the main complaint we've talked about, paragraph 4, Dr Leeks outlines his
24 perspective on this incident. I think about halfway down that paragraph we've got a
25 sentence that starts, "I spent time with each of the boys" might be about 10 or 11 lines
26 down, there it is. So from there down to about five or six lines further down.

27 "I spent time with each of the boys concerned in an attempt to try and allay their
28 fears or even terror, their intense feelings of degradation and unhappiness and anger. I then
29 spent time with them as a group looking at how the pain of their feelings might be reduced.
30 One of the boys wished to be included in the aversive programme for the boy concerned.
31 And the others stated they too wished to be included."

32 If we go down about five lines from where you've called out there it starts "It
33 seemed therefore reasonable." That's about right. "It seemed therefore reasonable that here
34 was an opportunity for them to do something about those feelings in an active way, as well

1 as bring home to the boy the feelings of the people he had harmed. The treatment was
2 described to the boys and they were asked to speak about what it was like for each of them
3 to be assaulted the way that he had attacked them and how it felt to be so treated. At that
4 point they pressed the switch, gave him a single shock from the aversive faradic circuit.
5 Each did this in turn and I took over and completed the aversive therapy session."

6 Down the bottom of that paragraph you'll see a citation from a text, the last four
7 lines of the penultimate paragraph. Dr Leeks provides a citation for academic support for
8 his approach. In light of this being seen as an ethical problem I would quote from Meyer,
9 Gross, Slater and Roth, clinical psychiatry and he quotes as follows:

10 "The advantages claimed for this technique are that the prime aim of the treatment
11 can be clearly cited in every case and can be carried out before an unconcealed audience.
12 The therapists can be interchanged if desired, the method is relatively brief", and lastly "it
13 is more efficacious than other methods of psychotherapy."

14 So that's his written response and I'm just going to depart from the correspondence
15 that you've provided us and just bring up the page of the text that he's referred to, because
16 there are a couple of points that I think are worth drawing out. Again, I'm not expecting
17 you to comment on this, I'm sorry about this. That's CCH002, we've got it there.

18 If we go to the paragraph I think that's being called up now, that's almost the
19 paragraph that's quoted. What I'd invite you to look at is the fourth line, and there's a short
20 phrase that's been deleted from the quote in Dr Leeks' letter. The fourth line reads, "The
21 therapists can be interchanged if desired, the method is relatively brief", and lastly "it's
22 more efficacious than other methods." He left out the phrase "demanding an average of 30
23 sessions." I'll come back to that shortly.

24 The other -- the next matter I would just call your attention to is at the bottom of
25 that same paragraph and it takes up at the end of the quote that's currently highlighted. He's
26 referring to the study which supports this technique, it's a study from 1961 by someone
27 called Wolpe. So it's already a 16 year old study. It's a small sample of 210 patients. And
28 even the authors indicate that unfortunately there was some drawbacks. It was a selected
29 group, some being rejected from the series even after treatment had started, and you'll see at
30 the end it says controls were not used.

31 The other difficulty with the quote that Dr Leeks has relied upon is apparent when
32 you look at the preceding paragraph. If we could just call that up. It starts "In the
33 reciprocal inhibition technique." So the relevance of this is that Dr Leeks has referred to
34 the advantages claimed for this technique. This technique in the text is explained in the

1 previous paragraph.

2 It's the reciprocal inhibition technique and the author of the study on which the text
3 relies says that the first step is to construct an anxiety hierarchy derived from the clinical
4 history information obtained at interview and psychological test responses. The hierarchy
5 consists of a list of stimuli ranked in order of their potency in provoking anxiety. These can
6 subsequently be confronted in imagination by the patient as graded stimuli.

7 It continues: "The patient is given training in deep muscle relaxation often using
8 hypnosis, and treatment commences by his being asked to imagine a situation which ranks
9 at the bottom of the anxiety hierarchy while he is completely relaxed. If relaxation is
10 undisturbed, this is followed by imagining the next item on the list and so on. Treatment
11 proceeds until the first situation in the hierarchy can be presented without disturbing the
12 relaxed state."

13 So the technique Dr Leeks is calling in aid in support of his process bears little
14 similarity to the technique actually being described in the text. It is about as far as you can
15 think of from being held down by one boy while three others take it in turn to administer
16 electric shocks.

17 The last point, and it's a short point that I'll draw your attention to, is the
18 penultimate paragraph on the page, starting "Other techniques." It says, "Other techniques
19 that have been used by behaviour therapists have included aversive conditioning using
20 chemical or electrical methods." And the relevance of that of course is that what he was
21 describing or what he had done was an electrical method, what he was pretending to be
22 describing or calling support for in his citation of that text was quite different.

23 Returning now -- thank you for your patience, Ms Hall and Mr Dunbar, returning to
24 the correspondence. We can have a look at document 0275008. See here a letter from
25 Dr Pryor, it's dated 26 August 1977, it's acknowledging Dr Leeks' letter and Dr Pryor is
26 writing on behalf of the Central Ethical Committee.

27 If we can call up the whole text. The second paragraph he's indicating that the
28 Committee has consulted with psychiatrists and it has caused some concern. They have
29 considerable doubts as to whether it is ethical to administer Aversion Therapy to a
30 committed patient unless his informed and voluntary consent is first obtained. And in that
31 regard I think Dr Parsonson, from whom we heard the other day, would think they were on
32 track.

33 It continues, "In this particular case we can in no way see that it is acceptable
34 psychiatric therapy to involve the victims in a punishing situation with the patient

1 concerned."

2 And at the bottom of the page, this I think is where it gets to the third and most
3 serious charge that can be laid, "We feel strongly that this constituted grossly unethical
4 conduct, likely to bring the reputation of the medical profession into disrepute."

5 If we have a look at the next piece of correspondence, 0275011, and this is a letter
6 dated 19 September 1977, it's from RP Caudwell, the General Secretary of, and I think you
7 can see from the letterhead, the New Zealand Medical Association. He's writing to
8 Mr Hindes, the Secretary of the Medical Council, in respect of this complaint and if we can
9 call up the second paragraph of the letter.

10 So he's saying that the Chairman of the Medical Practitioners Disciplinary
11 Committee has directed that the complaint be referred to the Penal Cases Committee. Mr
12 Dunbar, I gather that's because it is the most serious of the three possible charges?

13 **MR DUNBAR:** [Nods].

14 **MR MOLLOY:** For investigation as it is a complaint of disgraceful conduct in a professional
15 respect. He refers to the fact that initially the complaint was referred to the Association's
16 Central Ethical Committee by the Chair at the time of the Australian New Zealand College
17 of Psychiatrists, Dr John Dobson. And then he outlines the Central Ethical Committee's
18 findings. And in the penultimate paragraph he express it is in this way:

19 "We have considerable doubts as to whether it is ethical to administer Aversion
20 Therapy to a committed patient unless his informed and voluntary consent is first
21 obtained."

22 Over the page the first complete paragraph there, if we could call that up. Again,
23 allowing that could have been carried out in good faith, but the author feels strongly that
24 this constituted grossly unethical conduct likely to bring the reputation of the medical
25 profession into disrepute. And that he goes on to observe that the findings were referred to
26 the Chairman of the Disciplinary Committee.

27 We then have a look at 275012. Mr Hindes, having received that letter from
28 Mr Caudwell, writes to the Convenor of the Penal Cases Committee and encloses a copy of
29 that letter. Then if we go to the next, which is 275013, letter dated 3 November 1977, the
30 Penal Cases Committee Convenor writes to Dr Leeks, informs him of the complaint and
31 attached to that document is a notice which I think we'll also go to, it's the next page. I beg
32 your pardon, it's 275014. This is the notice that was attached. So it's a notice under section
33 56(2)(a) of the Medical Practitioners Act, and the purpose of this I think, Mr Dunbar, is to
34 inform Dr Leeks of a complaint against him. It informs him that there will be -- the

1 Committee will convene on a date given, 23 November, it invites Dr Leeks to provide any
2 written explanation he wishes and also offers the opportunity I think to be heard. And the
3 complaint is actually articulated at paragraph 1 there, if we bring that up.

4 "That at Lake Alice Hospital during 1974 in the course of giving treatment to a
5 patient with an ECT machine you permitted young fellow patients to administer the shock
6 treatment to the patient concerned by means of the ECT machine."

7 Dr Leeks then responds and that's the next document, 275015. This is a letter again
8 from Dr Leeks to Dr Gowland dated 7 November. He outlines his explanation again, and if
9 we go to the last page, the final paragraph he says, "I'm aware that written communications
10 does not always supply the answers required and I should wish to be heard."

11 In between I'm just going to insert another document into the documents that you
12 wouldn't have necessarily had but that we have as part of this narrative. It's CRL
13 008279_00011. Here's the letter, it's 18 November 1977. So it's five days before the
14 meeting that has been convened.

15 The final page you'll see that it's signed by Professor F J Roberts who is a Professor
16 of Psychological Medicine at Wellington Hospital. We can see from the first paragraph
17 that he is responding to a request from Humphrey Gowland that he comment on the matters
18 under consideration.

19 We've had a look at this in another context earlier in the week, ma'am, I won't go
20 through it comprehensively but there are a couple of extracts just to bear in mind. On that
21 first page the third paragraph, it starts "It will be immediately apparent that the technical
22 difficulties which confront the therapist in this kind of treatment are enormous."

23 **CHAIR:** This is about Aversion Therapy isn't it?

24 **MR MOLLOY:** Indeed. I think Dr Parsonson responded to this letter the other day.

25 **CHAIR:** Yes.

26 **MR MOLLOY:** If we jump to the middle of the next page of the letter, dead in the middle of the
27 page there if we can call up the paragraph, that's the one.

28 "It should be clear from these comments that the actual technical requirements for
29 this kind of treatment are far from straightforward. Personally I believe that it is absolutely
30 essential in treatments of this kind, and I am not alone in my belief, that in order for the
31 treatment to be effective, the subject needs to give his agreement to the treatment and to
32 desire to change."

33 The first sentence of the next paragraph, he says, "I am concerned that the account
34 given by the boy clearly identifies the treatment with punishment."

1 And at the very foot of that page and the beginning of the next he says the end of
2 that paragraph, "If the boys saw the treatment in terms of punishment, then I find it very
3 difficult to understand the justification for incorporating them in these sessions."

4 The last paragraph he's expressing his concern for Dr Leeks, but at the end he
5 concludes, "I can understand the logic of Dr Leeks' argument, but I cannot accept the
6 premises from which he argues."

7 We have no record as has been confirmed, we have no record of any outcome, at
8 least no overt record of any outcome of the meeting that occurred on the 23rd. We simply
9 know that Professor Roberts, the Chair of the Australian New Zealand College of
10 Psychiatrists, and Dr Mirams have all expressed their concerns overtly about what
11 occurred.

12 If we just go to 275020, we see here a letter from Dr Leeks dated 15 December of
13 1977. So it's two or three weeks after the meeting, and at the beginning of that he's
14 indicating that he's looking for a letter of good standing from the registration authority,
15 because he wants to go to Australia.

16 The next document, 275021. Clearly in the new year, 4 January. In the first
17 paragraph if we can call up the top of that, thank you. He's received his certificate, it's
18 dated 22 December. But he's asking that the reference to disciplinary proceedings that had
19 been taken be deleted, so obviously there was some reference to that on the certificate.
20 Clearly the outcome I think, as I've been corrected, quite true, I opened on the basis that a
21 charge had been laid, in fact the outcome of the meeting I think was that no charge be laid,
22 am I correct about that?

23 **MS HALL:** Correct.

24 **MR MOLLOY:** Thank you. I acknowledge my error at that. I think at some point, Ms Hall,
25 you've confirmed that you've looked for any record of that meeting, there's no tape or
26 recording or anything of that sort.

27 **MS HALL:** That is correct.

28 **MR MOLLOY:** Thank you. I think you confirmed that at some point perhaps 20 years ago any
29 files relating to a complaint that did not proceed to a hearing or a charge were destroyed,
30 am I right about that?

31 **MS HALL:** To the best of our knowledge.

32 **MR MOLLOY:** As far as you know?

33 **MS HALL:** Yes.

34 **MR MOLLOY:** Thank you. Mr Dunbar, I think you've confirmed that the process was consistent

1 with the requirements of the Act?

2 **MR DUNBAR:** Yes, it was.

3 **MR MOLLOY:** Thank you. I just want to leave that now and move on to the second of the
4 complaints which I think was in 1991, again by a survivor. And again, I think, Ms Hall,
5 you've checked you were able to track down something through a colleague at the old
6 Medical Association I think Gay Fraser I think you said?

7 **MS HALL:** Yes, that's correct.

8 **MR MOLLOY:** And they have a record that a complaint was made, a record that it was not
9 sufficient, so nothing was taken any further?

10 **MS HALL:** Correct.

11 **MR MOLLOY:** But there's no material from which we can gather any substantive information?

12 **MS HALL:** That is correct.

13 **MR MOLLOY:** Thank you. Then just moving on to the third of the three, which I think is under
14 the 1995 Medical Practitioners Act.

15 **MR DUNBAR:** That's correct.

16 **MR MOLLOY:** And Mr Dunbar, I think you say in your statement that this brought into being
17 the Complaints Assessment Committee.

18 **MR DUNBAR:** That's correct.

19 **MR MOLLOY:** Which is sort of, I think you described it as a revised form of the Penal Cases
20 Committee.

21 **MR DUNBAR:** Yes.

22 **MR MOLLOY:** That concerned the 1977 complaint.

23 **MR DUNBAR:** Similar in function and form.

24 **MR MOLLOY:** And so there's a record in January 1999 of a survivor whose made a complaint
25 and I think his letter is outlined in your statement, Ms Hall, it's fairly short: "To whom it
26 may concern. This note is to say that you may use this information to start an investigation
27 into the incidents of abuse from Dr S Leeks, formerly practising out of Lake Alice Hospital,
28 as well as the unit in Palmerston North by the name of Manawaroa Hospital in the early to
29 late 1970s."

30 And I think it's apparent from Medical Council records that a Complaints
31 Assessment Committee was appointed to investigate this. I think we've got the outcome of
32 their process and it's document 0275018. So it's a fairly fuller, it's about three pages long
33 plus a signatory page where the three members of the Committee signed the letter. It's
34 dated 21 January 2000. And it's on the letterhead of the Complaints Assessment

1 Committee.

2 Am I right, was this Committee, like the Penal Cases Committee, separate from the
3 main body as a separate entity?

4 **MS HALL:** Yes.

5 **MR MOLLOY:** But with its members nominated by the Medical Council?

6 **MR DUNBAR:** Two of the three members, yes.

7 **MR MOLLOY:** Again, it was the same format, two medical officers and one lawyer?

8 **MR DUNBAR:** Yes.

9 **MR MOLLOY:** So it's dated in January 2000, it's in response to a complaint from approximately
10 a year earlier, January 1999. It's a fuller -- I won't go through the whole thing, but it's clear
11 there has been a process undertaken by this Committee. I think in context, it's around the
12 time of the litigation in the High Court that we heard about the other day from Grant
13 Cameron, so I think he had about 70 or 80, possibly 90 plaintiffs that lodged proceedings in
14 the High Court against the Attorney-General. And in that context it appears from page 2 of
15 the letter that there were some perceived impediments to requesting for an investigation.

16 Just in paraphrasing, and Ms Hall or Mr Dunbar feel free to augment this if it's too
17 reductive, but I think at paragraph 9 it's indicated that Dr Leeks had responded in some
18 way, through his lawyers, it was quite clear that he was opposing any further investigation.

19 And over the page at page 3, the Committee has identified a number of difficulties
20 that would arise and than might impede an investigation at that time. So obviously there's
21 the lapse of time, there's the fact that in some respect it had been looked at previously,
22 similar issues. It refers to some Police involvement, at least one Medical Council
23 investigation. Refers to the fact that Dr Leeks has not practised in New Zealand since, and
24 appears to be unlikely to do so. Refers to the High Court proceeding and alternative
25 methods of addressing concerns. Also the obvious fact that the complainant was referring
26 to material that might have been available had other people been prepared to provide it but
27 they didn't. There's some difficulty of communicating with him, and then at paragraph 1 it
28 says that "if evidence emerges from the High Court proceedings which shows disciplinary
29 action is warranted, it will doubtless be brought to the Medical Council's attention then."

30 You may not be able to answer this, but who might have brought that kind of
31 information to the Medical Council's attention?

32 **MR DUNBAR:** I don't know.

33 **MR MOLLOY:** Are you aware of anyone doing so?

34 **MS HALL:** No.

1 **MR DUNBAR:** No.

2 **MR MOLLOY:** Subsequently it became apparent that the Crown settled litigation involving close
3 to 200 survivors of Lake Alice on the basis of treatment they had received at Lake Alice,
4 that was outside even the standards of the time. Are you aware of any efforts made by or
5 on behalf of the Medical Council to make inquiries about that at any time?

6 **MR DUNBAR:** I am not.

7 **MR MOLLOY:** Would there be any impediment to the Council undertaking an inquiry of that
8 nature? Is there any reason why it couldn't have done so?

9 **MR DUNBAR:** If you are talking about a systemic matter or an organisation, the Council does
10 not have the jurisdiction to undertake an investigation into systems.

11 **MR MOLLOY:** I think you're talking about an individual psychiatrist who has been the subject
12 of the three previous complaints we're talking about.

13 **MR DUNBAR:** Okay. In the 2003 legislation the Health Practitioners Competence Assurance
14 Act, the Council could self-initiate an investigation and refer matters to a Professional
15 Conduct Committee. Under the earlier legislation the 68 Act and the 1995 Act, there was
16 no ability for the Medical Council to self-initiate an inquiry or an investigation, it would
17 respond to a complaint and begin the complaints process or notifications process that that
18 legislation provided for.

19 **MR MOLLOY:** Presumably the complaints processes under the 68 Act and the 95 Act were
20 designed to be non-technical, so that a lay person could make a complaint?

21 **MR DUNBAR:** That's correct.

22 **MR MOLLOY:** Presumably that would extend to another medical practitioner who was
23 concerned?

24 **MR DUNBAR:** I'm not familiar with whether there was particular provision for a medical
25 practitioner to make a notification or complaint about another practitioner. That is certainly
26 provided for in the current legislation, the 2003 legislation, but in 1995 I don't believe there
27 was a specific reference to a medical practitioner making a complaint about another, but I
28 would assume that that wasn't precluded.

29 **MR MOLLOY:** I think the 68 Act just refers to a complaint by any person.

30 **MR DUNBAR:** Yes.

31 **MR MOLLOY:** I don't have the 95 Act in front of me and I don't know the answer to this, so it's
32 not a trick question, but it's possible the 95 Act is framed in similar terms. Is it likely that it
33 would have specifically precluded?

34 **MR DUNBAR:** No, it's not likely to have precluded any practitioner from doing so, they would

1 fall into the general category of a complainant or a notifier.

2 **MR MOLLOY:** So from what source might the Medical Council expect information to be
3 provided at the outcome of significant litigation involving allegations such as those
4 involved in that litigation?

5 **MR DUNBAR:** I'm not sure I'd care to speculate on one source over another.

6 **CHAIR:** Can I ask a question arising from this. I appreciate you weren't there at the time, so this
7 is all hindsight. But the Complaints Assessment Committee had looked into this matter,
8 they'd found a whole lot of reasons that meant that they weren't able to uphold it, I think,
9 I haven't seen the last bit of the thing, but they didn't proceed on the complaint, did they?

10 **MR DUNBAR:** [Nods].

11 **CHAIR:** Do you know from the legislation whether there was anything precluding the
12 Assessment Committee, having reached a decision like that, to reopen that original
13 complaint in the light of information they've subsequently received?

14 **MR DUNBAR:** I'm not aware of anything in the legislation, but I would imagine the CAC would
15 be aware of the obligations around natural justice and matters previously dealt with.

16 **CHAIR:** Yes, it would be subject to that.

17 **MR DUNBAR:** Subject to that.

18 **CHAIR:** Subject to alerting the subject of the complaint etc, so --

19 **MR DUNBAR:** [Nods].

20 **CHAIR:** -- this is all speculative I grant you, but there's nothing prohibiting it, but they would be
21 subject to restraints. Have you got any knowledge from history as to whether that ever did
22 happen, that an Assessment Committee reached a decision and then opened it up again in
23 the light of later information?

24 **MR DUNBAR:** I'm not aware of any instance of that either in the 95 Act or even in the current
25 legislation.

26 **CHAIR:** I take it you don't have either?

27 **MS HALL:** No, sorry ma'am.

28 **CHAIR:** Thank you.

29 **MR MOLLOY:** Ma'am, to address the point that you've made, sorry, I should have made it
30 before; if we look at paragraph 14 of the letter that we've just been looking at. The
31 Committee observed that the cumulative effect of so many difficulties led them to the view
32 that no further steps should be taken.

33 **CHAIR:** My question relates to if something popped up later, however, but, and again, I accept
34 that it is speculative.

1 **MR MOLLOY:** Just while we're in this timeframe, I think that at some point during this year, so
2 in 1999, after this complaint was lodged but before the Committee reached and conveyed
3 its decision, the Medical Council invoked section 45 of the Act at that time, and indicated
4 to Dr Leeks that because he'd been out of the country for more than three years, he would
5 be, I can't recall the terminology.

6 **MS HALL:** Removed.

7 **MR MOLLOY:** Removed from the register.

8 **MR DUNBAR:** That's correct, there was an obligation on the Council to do so for doctors who
9 had been absent.

10 **MR MOLLOY:** Indeed. But I think if we look at the same section, section 45(4) indicates that
11 the removal under subsection 1(c) of this section of a practitioner's name from the register
12 does not affect that practitioner's liability for any act done or default made before the date
13 of the removal. So given that, there would have been nothing to prevent the Committee
14 from pursuing a complaint even after Dr Leeks had been removed from the register. Is that
15 fair?

16 **MR DUNBAR:** There would be nothing to prevent the Medical Council considering whether to
17 refer a matter to it, yes.

18 **MR MOLLOY:** And I think you mentioned before, there is a similar provision in the current
19 legislation?

20 **MR DUNBAR:** There is.

21 **MR MOLLOY:** Ma'am, I've got no further questions. I should indicate that I think Ms Green,
22 who is acting for CCHR, the core participant, had obtained leave to ask questions. She's
23 actually indisposed, she's injured herself and she's not here. I think I have covered most of
24 the questions.

25 **CHAIR:** You were aware of the questions she wanted to advance?

26 **MR MOLLOY:** In broad terms, ma'am. Would it be possible to take a couple of minutes to talk
27 to them and just ask --

28 **CHAIR:** I think it would be appropriate if you just went and checked with them that everything
29 has been covered off.

30 **MR MOLLOY:** As a matter of courtesy ma'am.

31 **CHAIR:** Yes, I think it's a good idea. We'll take a brief adjournment while you do that.

32 **MR MOLLOY:** Thank you.

33 **Adjournment from 2.32 pm to 2.48 pm**

34 **CHAIR:** Yes Mr Molloy.

1 **MR MOLLOY:** Thank you, ma'am, I've just got two questions and then I think Ms Joychild is
2 going to ask you if she can have a couple of questions as well.

3 **CHAIR:** All right.

4 **MR MOLLOY:** The first was really, is it a shortcoming that the Council appears to have such a
5 passive role and the question of regulation of medical practitioners in terms of their
6 behaviour and conduct?

7 **MR DUNBAR:** I'm happy to answer the question, Mr Molloy. I do not believe there's a current
8 shortcoming. I think the current legislation, the new legislation is more than just a new
9 Act, a new name, it has a very clear focus on public health and safety, it has a very clear
10 mandate to take action across a wide toolkit to ensure that these issues or issues such as
11 those we've been discussing this morning are addressed and addressed promptly. It does
12 this in a number of ways, the current legislation now provides for lay members to
13 participate in proceedings, so there's always a non-medical perspective brought into the
14 discussion. The current Professional Conduct Committees, for example, are two medical
15 committees and one lay member. Medical Council itself has a number of lay members on
16 it.

17 The new legislation, or the current legislation that's been in place now since 2004
18 also provides for the Professional Conduct Committees, the successors to the CACs, to
19 have independent legal advice, so that legal advice will assure that they are addressing the
20 thresholds, they are addressing the particulars that have been charged with doing that.

21 There's also greater inter-agency communication that was sort of, I guess, an
22 outcome of some of those earlier inquiries where it was felt different agencies didn't know
23 what was going on. So there's now provision within our legislation, this legislation, for
24 agencies to work with each other to inform each other. That's reinforced by the current
25 close sort of confidential roles of the Health and Disability Commissioner's office and of
26 the Medical Council. The HDC deals with those issues around breaches of code, but at the
27 same time the Medical Council has that authority and mandate to look at the more
28 fundamental questions around doctor's competence. So both sides are looked at.

29 And I think one of the big changes that came around with the new legislation was
30 the ability for the Medical Council and the other authorities under that legislation to act to
31 address risk of harm in the meantime. No longer -- and this was, I guess, a fault with the
32 1995 legislation -- no longer must a Medical Council wait for a proceeding to unfold before
33 it takes action. It has the ability now while there is an investigation underway, while the
34 Police are addressing the matter, while the Health and Disability Commissioner is

1 addressing the matter, they have the ability to look at whether there is a question of risk of
2 harm and if necessary to impose conditions on the doctor's practice, or even to suspend that
3 doctor's practice.

4 So I don't believe the current legislation gives the Council, or could be expected by
5 the Council to give it a passive role, it's a very active role. Medical Council also has
6 processes for ensuring that when notifications come in they are addressed very early on and
7 appropriate actions put in place.

8 **MR MOLLOY:** So of the three complaints, let's take the first and the last as perhaps examples.

9 In both of those cases there was a complaint made on behalf of an individual, but both
10 complaints were in the context in which it was quite clear that other potential victims,
11 without pre-judging, there were other potential victims who could enlighten the substantive
12 concern at the heart of it, which is whether there had been wrongdoing by this psychiatrist.
13 And the attitude taken on both of those occasions seems to have been quite linear; we'll
14 deal with this complaint that's in front of us, on the information that's provided.

15 How would -- sorry, first of all, would that be dealt be differently now and if so how
16 would it be dealt be differently?

17 **MS HALL:** I think the answer to that question is there is no doubt that that would be done
18 differently now. As David has alluded to, each Professional Conduct Committee, which is
19 the equivalent of a CAC, Complaints Assessment Committee, has an in-house lawyer
20 attached to that Committee that guides them throughout that process and provides advice as
21 to what information they should be gathering, who they should be talking to, providing
22 legal advice as to the, you know, what legislation they should be looking at, what
23 statements apply from Council. And also I think importantly there's a lot more provisions
24 under the new Act that allow that Professional Conduct Committee to make those
25 investigations and require information, and if information is not provided, then it is actually
26 an offence to not provide that information. So the powers of an investigation under are
27 2003 Act are a lot broader.

28 **MR DUNBAR:** I might add to that that subject to the confidentiality around a Professional
29 Conduct Committee, if Council became aware of another concern, a similar concern, then
30 the legislation does allow the Council to add that new matter to the existing Professional
31 Conduct Committee consideration.

32 **MR MOLLOY:** The other question I had was a slightly different one, so we'll change tack. And
33 it goes to the apology that you read out at the beginning of your evidence. Thank you for
34 that. Just for the people who are at the back of the room listening, what exactly is it that the

1 Council is apologising for?

2 **MS HALL:** The Council is apologising for not taking the right action. If it was today, there is no
3 way Dr Leeks would be practising. Our job is to protect the public, we're not there to
4 protect doctors, so that's, you know, a shortcoming, if you like, of the Medical Council and
5 he shouldn't have been allowed to continue to practise.

6 **MR MOLLOY:** Thank you for that. Ma'am, I've got no further questions, Ms Joychild may have
7 something to ask.

8 **CHAIR:** Yes Ms Joychild.

9 **QUESTIONING BY MS JOYCHILD:** Yes Ms Hall and Mr Dunbar, good afternoon, I'm
10 counsel representing the survivors of Lake Alice, so in that capacity I've got three
11 questions. Looking at the -- following on from the last matter that you just talked about,
12 my reading between the lines of the documentation was Dr Leeks went along that hearing
13 and persuaded them that if he left New Zealand and went to Australia to practise, that they
14 would not press charges against him. So a deal was done, which is quite often done, has
15 been done in the past in those sorts of situations. Have you got any comment on that?

16 **MS HALL:** Sorry I wouldn't be able to speculate on that.

17 **MR DUNBAR:** I have no comment on that.

18 **MS JOYCHILD:** Okay. So also, just for clarification, probably Mr Dunbar, about the processes.
19 If -- as I understand it, I want you to correct me if I'm wrong, if any of the survivors now
20 want to make a complaint against Dr Leeks for what he did to them 40 something years ago
21 and they present the Council or the relevant disciplinary committee with further
22 information which, of course, there is a lot more now than what was presented in complaint
23 number 2, would the New Zealand Medical Association be able to accept that complaint for
24 investigation?

25 **MR DUNBAR:** The current legislation allows the Council to look at matters of conduct about a
26 practitioner who was previously registered but is no longer registered. The qualification
27 that is the Council can't relitigate or reinvestigate a particular complaint that has been made
28 about Dr Leeks. That would not preclude a new complaint coming through, or from a
29 different complainant or about a different matter.

30 The qualification on that is that the Medical Council is now required to pass to the
31 Health and Disability Commissioner any complaint where there is an impact on a
32 consumer. In that way the patients' rights as a consumer are addressed and protected.

33 The Medical Council itself then can't begin an investigation on matters of conduct
34 until the Medical Council's been advised by the Health and Disability Commissioner that

1 the Commissioner is no longer going to be investigating the matter or hasn't otherwise
2 addressed it.

3 So the Medical Council, in some respects, can't begin its own investigation while
4 the matter is before the Health and Disability Commissioner, but as I said, if there were
5 some concern for the Medical Council that arose from the alleged conduct, and Council felt
6 that steps were needed to ensure the public was protected in the event that this doctor was
7 practising still, then the Medical Council can take action around the doctor's practising
8 certificate. In the case of Dr Leeks, he's no longer practising, so in some respects those
9 opportunities are removed.

10 **MS JOYCHILD:** Yes, well the survivors might take the point that people are not protected from
11 psychiatry unless the Medical Council makes a statement about the wrongdoings of
12 Dr Leeks back then and sets some parameters around it. So would the legislation in your
13 interpretation of it enable that broader interpretation of protection?

14 **MR DUNBAR:** Council does speak through a number of statements about its expectations around
15 doctors' conduct and ethical conduct, we have statements around matters to do with
16 prescribing, the maintenance of boundaries, the need to maintain professionalism and
17 professional conduct at all times. So in some respects it does speak constantly to the
18 profession about that.

19 Council might choose with information to revise those statements, as it does from
20 time to time. To make sure they catch any matters of topicality, but beyond that I couldn't
21 give any undertaking or any comment about what the Council might do in the scenario you
22 present.

23 **MS JOYCHILD:** Right, because out of the various branches of medicine, psychiatry is obviously
24 the one where people are most vulnerable, most at risk, because they have supposedly
25 something wrong with their mental functioning. And wouldn't you think that there would
26 need to be more clear guidance given to psychiatrists in particular now that all this
27 information is coming forward, that showed the incredible laxness and inability of the
28 profession to regulate itself and to control someone like Dr Leeks?

29 **MR DUNBAR:** Those are governance decisions for the Medical Council to make and not for me
30 to opine on.

31 **MS JOYCHILD:** No further questions.

32 **CHAIR:** Thank you Ms Joychild. I take it there's nobody else, nobody else has been granted
33 leave, so we won't open that Pandora's box. Anything else arising, Mr Molloy, other than
34 from the Commissioners?

1 **MR MOLLOY:** No, ma'am, just acknowledging that it's a lawyer's dream and everyone else's
2 nightmare when you drag two witnesses along and the lawyer does all the talking, so my
3 apologies for that.

4 **CHAIR:** A rare luxury for the lawyer I might say, Mr Molloy. I'm just going to ask my
5 colleagues if they have any questions. You are spared then from homilies and other things
6 from us, and I'll just ask Commissioner Alofivae to close off your evidence.

7 **COMMISSIONER ALOFIVAE:** Ms Hall and Mr Dunbar, look can I just thank you on behalf of
8 the Commission, exactly like our counsel said, Mr Molloy, for coming along this afternoon
9 and answering to the very best of your abilities questions that could not have been
10 comfortable in most respects and having to reflect back on matters that happened a very
11 long time ago. We also want to be able to formally acknowledge the apology that you've
12 now placed on record, and hope that all goes well moving forward.

13 **MR DUNBAR:** Kia ora.

14 **CHAIR:** Thank you. We'll take a short adjournment before our next witness or would you like to
15 carry on?

16 **MS JOYCHILD:** GRO-C.

17 **CHAIR:** We will adjourn.

18 **Adjournment from 3.02 pm to 3.27 pm**

19 **MR MOLLOY:** Afternoon, ma'am, we've got Mr Soeterik in the witness box and his counsel is
20 Mr Forster.

21 **CHAIR:** Good afternoon, Mr Forster, welcome to the Royal Commission.

22 **MR FORSTER:** Thank you ma'am. What I propose to do is have Mr Soeterik read his brief. If
23 either my pace or his pace is too quick or too slow, please let us know. Once he's read his
24 brief, I'll have a few supplementary questions.

25 **VICTOR FREDERIK WILLEM SOETERIK**

26 **CHAIR:** Thank you Mr Forster. Before we do anything else I'll ask him to take the affirmation.
27 Mr Soeterik, do you solemnly, sincerely and truly declare and affirm that the evidence you
28 will give before the Commission will be the truth, the whole truth and nothing but the
29 truth?

30 A. I do.

31 **Q.** Thank you very much.

32 **QUESTIONING BY MR FORSTER:** Your name is Victor Frederik Willem Soeterik?

33 A. It is.