Witness Name: Janice Wilson

Statement No: WITN0529001

Exhibits: WITN0529002 – WITN0529003

Date:

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

WITNESS STATEMENT OF DR JANCE WILSON

I, Dr Janice Wilson, Chief Executive of Wellington, state:

1. I am currently the Chief Executive of the Health Quality & Safety Commission of New Zealand. I held the statutory role of Director of Mental Health from 1993 - 2000. I am a psychiatrist by training.

2. I understand that the Royal Commission of Inquiry into Abuse in Care (the **Commission**) is conducting a case study in relation to the Lake Alice Child and Adolescent Unit (the **LAU**), with a view to conducting a hearing in June 2021.

3. The Commission has asked, by letter dated 10 March 2021, that I provide it with a formal written statement given my "involvement as Director of Mental Health responding to Civil Litigation filed in 1994 by former Lake Alice Hospital patient Leonie McInroe, and a 1999 class action filed on behalf of a group of former Lake Alice Hospital patients by lawyer Grant Cameron." The Commission asks that my statement cover my involvement in the litigation and the subsequent settlement process.

4. Those events were instigated in the early 1990s and continued through the 2000s. I am grateful, therefore, that the Commission has provided me with certain documents from that time. I have read the documents provided and they have informed, to some extent, the content of this statement.

5. The headings that follow reflect the questions set out by the Commission in its letter of 10 March.

My current position

6. As mentioned above, I am the Chief Executive of the Health Quality & Safety Commission New Zealand. I have been in that role since 2011. Prior to that, I was the deputy director-general at the Ministry of Health. I was the Director of Mental Health and Chief Advisor to the Ministry of Health from March 1993 – June 2000 (Curriculum Vitae of Dr Janice Wilson, prepared circa 2021 [**WITN0529002**]). A brief curriculum vitae is attached as Appendix A to this statement.

My previous experience as a psychiatrist

7. I trained as a medical doctor during the 1970s, achieving a MB ChB in 1976. I became a registered psychiatrist and a Fellow of RANZCP in 1982 and worked full time as a consultant psychiatrist at Wellington Hospital until late 1988, except for some part-time work during 1987 when I had a young infant.

My responsibilities as Director of Mental Health

8. My role as the Director of Mental Health was a statutory role, as outlined in the Mental Health (Compulsory Assessment and Treatment) Act 1992 (**1992 MH (CAT) Act**). The legislation came into effect on 1 November 1992.

9. In its day, the 1992 MH (CAT) Act was considered progressive, with increased protection for patients, compared to the 1969 equivalent Act. I had responsibility for overseeing the effective implementation, application and use of the MH (CAT) Act from the Ministry of Health and for Government.

10. My role as the Director of Mental Health was performed alongside my role as a Chief Advisor, Mental Health to the Ministry of Health.

My role in the conduct of the McInroe litigation and the Cameron Class action litigation

11. I played a small role supporting Health Legal and Crown Law in relation to the McInroe and Cameron litigation by providing advice when required. Health Legal was the team within the Ministry of Health with responsibility for this matter, and Crown Law was directing it overall. For that reason, I do not recall being heavily involved in discussions or decision-making around the litigation; I cannot recall in any detail the role that I had in relation to either the McInroe litigation or the Cameron Class action litigation.

12. I suspect I was asked to attend the mediation meeting with Ms McInroe by Crown Law and Health Legal to provide a sense of safety (as a clinical psychiatrist with an awareness of risks involved for Ms McInroe), but I do not remember the meeting or any details.

13. Although I was aware of the Cameron class action, I do not recall specific details or what role, if any, I had in it. I was aware that there were other LAU claimants, and the materials provided to me for the purposes of preparing this statement show hand-written notes from a meeting with the then Minister of Health, the Hon Wyatt Creech. My advice at that time was that it would be damaging for victims to go through a process like the mediation Ms McInroe attended. I believe that I advised that if there was another course that would allow Ms McInroe and others to be heard and that allowed for an appropriate apology, then that other process ought to be pursued.

14. I think it was generally the view of those of us who worked in mental health that there should have been an alternative mechanism (by which I mean something non-adversarial), even from early on. It was, however, a challenging issue for Government officials to respond to and give advice on.

15. I have been provided with Cabinet Papers that were prepared for Hon Annette King when she was the Minister of Health which were produced when I was the Deputy Director General, Mental Health Directorate, Ministry of Health. This was a second-tier management role. There was another Director of Mental Health and another Chief Advisor at that time. I signed the papers as the Deputy Director General on advice from my officials in the usual course.

16. I discuss below the affidavit I provided in relation to the application to strike-out of Ms McInroe's claim. I expect I swore that affidavit after being asked to do so by Health Legal or Crown Law. The text of the affidavit shows that it was relevant to the claim process, rather than the claim's merits. When I swore that affidavit in 1995 I was not the manager of the mental health team. The affidavit indicates that team was asked to compile relevant notes and locate relevant staff, as well as to consider the Attorney-General's ability to gather evidence relevant to the litigation.

When I become aware that the complaints against Dr Leeks were widespread

17. I can remember hearing in the media about complaints regarding Dr Leeks when the first inquiries were held in the 1970s when I was a medical student. I believe there would have been intermittent media comments following those inquiries

through the 1980s when I was doing my psychiatric training, and in my early years as a psychiatrist.

18. I recall that Professor John Werry, a child psychiatrist based in Auckland, was outspoken in the media in the 1970s and 1980s regarding the complaints about Lake Alice and some of the psychiatric practises in use on children and young people during that time. I was aware, therefore, as a practitioner, that there were conversations happening and that some of them pertained to Dr Leeks. In addition, these issues, ongoing inquiries into harm experienced by patients and emerging evidence of more appropriate service responses to people with mental illness, led to wider professional and public discourse on the appropriateness of intuitions, such as Lake Alice, as places for inpatient treatment and care.

19. However, I did not know how widespread the complaints against Dr Leeks were until the class action started. Until then, while there had been "noise" around Dr Leeks, it had not been clear just how many complainants there were with stories to share about their adverse experiences.

My views as to the merits of the claims brought by Ms McInroe and the class action plaintiffs

20. In my view the claims lodged were reasonable. I thought then and I still think now, that the complainants' stories are compelling and believable. Any reasonable person would say Ms McInroe and the class action plaintiffs had good reason to pursue their respective claims.

21. My experience would indicate that although there were many wonderful caring clinicians and some innovative changes in treatments and approaches to patients in psychiatric institutions in the 1970s-1980s, these institutions could also be places where sometimes treatment and care were used as punishment for perceived "bad behaviour". In the past (more so than now) while some staff who worked in these institutions were excellent and well-trained; others were not trained health professionals (because job requirements and standards were different) and they were put in often difficult positions working with groups of people or patients who posed unique challenges. I base that view on my experience as a practitioner and mental health advisor, not a review of the evidence in the legal sense.

22. I would have said as much verbally to Health Legal and, I think, to the senior solicitor that was working with the Ministry from Crown Law when the claims were live. That would have been the view of most of my psychiatric colleagues.

23. The merits of the complaints' claims, in so far as they related to the use of unmodified ECT, were (I think) generally accepted by psychiatrists as serious. While ECT generally had (and continues to have) a place in treating patients, I do not think that psychiatrists now or then would have regarded the use of unmodified ECT as appropriate.

24. The use of ECT does need to be understood within the context of tools available at the time for dealing with young people whose behaviour might have been harder to conceptualise and respond to therapeutically than would be the case now. In the 1970s, certain behavioural issues were responded to by removing the young people concerned to locked institutions to be "treated", thus characterising the behaviour as an illness. The use of modified ECT was considered an effective treatment for those with certain psychiatric illnesses, whom it benefitted. Unfortunately, the health system did not have the necessary services or resources available at the time to follow a different and more appropriate path.

The reasons I provided an affidavit in 1995 in support of the application to strike out Ms McInroe's claim

25. I swore the affidavit because I was asked to do so given the procedural hurdles that made responding to the claim difficult for the Ministry and the Attorney-General. The affidavit did not comment on the merits of Ms McInroe's claim; it was relevant to the process and procedure of litigation, and the Attorney-General's ability to meaningfully participate in that process.

26. I have been provided with a draft version of that affidavit, but I separately have a final version (Affidavit of Dr Janice Wilson, 27 September 1995 [**WITN0529003**]).

27. As set out in the affidavit, it would have been difficult for the Attorney-General to obtain and provide the evidence required to respond to Ms McInroe's claim. The Ministry tried to see if there were notes and staff who could give evidence, but established that would not be possible. The claim sought to establish abuse that had occurred in the 1970s (I was not the Director of Mental Health at that time), but in the 1990s it was going to be difficult to compile relevant evidence.

Why the mediation with Dr Leeks and Ms McInroe was conducted in secrecy

28. I understand that mediations are usually conducted in confidence. I expect that Crown Law would have been the decision-maker, but the requirement for "secrecy" could have been to do with Dr Leeks or at his insistence.[1]

The conduct of the mediation and why it did not succeed

29. I am not sure why the mediation did not succeed. It does distress me to see that Ms McInroe was further traumatised by the mediation process. It is my view that any meeting with Dr Leeks would have been retraumatising for Ms McInroe.

Whether settlement of the Grant Cameron class action was afforded priority over settlement of the McInroe proceedings. If not, why the McInroe litigation continued for almost a decade, whether the delays were justified and, if so, how?

30. I have no knowledge or recollection of the settlement processes or the decision-making in this area. I was not involved with this matter and I am not sure whether one or other of the claims was prioritised. My view is that those at Crown Law were trying to do the best they could.

31. I note that the Cameron litigants were active through the 1990s and that the then-relevant Ministers received advice on the appropriate approach. It is relevant that after the election in 1999 and the subsequent change of Government, certain decisions taken in regard to the Cameron claimants were reviewed.

Why Ms McInroe was required to undergo a further psychiatric assessment in 2001

32. To the best of my recollection, I did not know that Ms McInroe was required to undergo further psychiatric assessment. At this time, I was not the Director of Mental Health and Chief Advisor, Mental Health.

Why the defendants insisted upon the assessment being conducted at the Mason Clinic, a forensic mental health facility, and why Ms McInroe's requests to change the venue were declined

33. I do not believe I had any visibility on this process or decision-making. I do wonder if proceeding at the Mason Clinic had to do with the location of the relevant psychiatrist (whom I regard as a very good practitioner).

---

[1] This seems to be the suggestion of David Williams, writing recently for Newsroom about the 1995 mediation. See Mr Williams' article "Crown set up secret Lake Alice meeting" at [hyperlink], accessed 1 April 2021.

My view on whether the psychiatric assessment could have been handled differently

34. I do not know whether the assessment could have been handled differently, because I do not know why Ms McInroe was required to undergo that process.

35. That said, when you look at things in retrospect, it always easy to see how things could have been handled differently. I think that if Crown Law or others thought Ms McInroe needed independent psychiatric assessment it should have been done at a neutral place that made her feel safe (if it had to be conducted at all). It would have been preferrable to conduct the assessment at a place of her choosing, and she should have been advised she could bring someone with her if she wished.

Whether I received any training as to obligations owed to former patients under the United Nations Convention against Torture or the New Zealand Bill of Rights Act 1990

36. I did not receive specific training on either United Nations Convention against Torture (**Convention**) or the New Zealand Bill of Rights Act 1990 (**NZBORA**).

37. My understanding is that the 1992 MH (CAT) Act was enacted to bring our mental health system in line with the NZBORA. I did not have training as such, but I understood what the relationship between the NZBORA and 1992 MH (CAT) Act was, in the sense that the 1992 MH (CAT) Act gave patients NZBORA-consistent rights to legal representation, and the right not to be incarcerated unless the incarceration complied with the mental health legislation (i.e., there are clear reasons for taking away someone's liberty and the presumption being that even compulsory treatment would occur in the community).

38. I do not think the Convention materially impacted the Ministry or the work of the Director of Mental Health until the 2000s. In preparing this statement I undertook some research and understand that New Zealand ratified the Convention on 10 December 1989 and then ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 March 2007.

39. I do not recall the Convention being much discussed within the Ministry prior to the early-mid 2000s. At that point, my recollection is that the Ombudsman's role assumed new significance in the mental health sector and the Convention was

relevant to the work done by the Ombudsman in relation to mental health. I was, by then, the Deputy Director General and not the Director of Mental Health.

Contact with the Medical Council, the RANZCP, the Medical Practitioners Board of Victoria or your predecessor as Director of Mental Health, Professor Basil James, in connection with Dr Leeks and the allegations made against him

40. As set out above, my involvement in this matter was minimal. I do not believe I had any contact with the Medical Council or the Medical Practitioners Board of Victoria in relation to allegations against Dr Leeks.

41. I do not recall having any contact with Professor James, nor his immediate successor, Dr Thakshan Fernando, on the topic of Dr Leeks or the LAU.

42. I do not recall any direct contact with the Royal Australian and New Zealand College of Psychiatrists (**RANZCP**) regarding Dr Leeks, but I note that I was provided with letters from its Executive Director that were sent to Minister King and copied to me in 2001 titled "Re: Dr Selwyn Leeks". However, I do not recall this or other correspondence with RANZCP regarding Dr Leeks.

43. I note that I was president of the RANZCP from 1997 – 1999, focused on Australian matters. To the best of my recollection, allegations against Dr Leeks did not come onto the RANZCP's agenda in my time as President; I do not recall such issues being raised.

44. The New Zealand branch did not bring any allegations relating to Dr Leeks to the knowledge of the Australian branch during my Presidency. The letters referred to above would indicate that allegations against Dr Leeks were raised with the RANZCP in 2001 (and I note that it was not me who took the allegations to the RANZCP). I am also aware, on the basis of materials provided to me by the Ministry of Health, that in 2001 the RANZCP (through its then Chief Executive) was vocal about asking the Medical Practitioners Board of Victoria to investigate the allegations against Dr Leeks, after the New Zealand Government apologised and compensated his former patients.

Statement of Truth

This statement is true to the best of my knowledge and belief and was made by me knowing that I may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed: GRO-C

Dr Janice Wilson

Date: 30th April 2021

This page has been intentionally left blank.