
**IN THE ROYAL COMMISSION OF INQUIRY INTO
HISTORIAL ABUSE IN STATE CARE**

UNDER The Inquiries Act 2013

AND

IN THE MATTER OF To inquire into and report upon responses by institutions to instances and allegations of Historical Abuse in State Care between 1950 and 2000.

AFFIDAVIT OF RAEWYN GAY ROWE

Dated: 12th February 2020

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AFFIDAVIT OF RAEWYN GAY ROWE

I, **Raewyn Gay Rowe**, of Auckland, Retired, swear:

1. I am the sister and welfare guardian of Paul Owen Beale who settled a claim against the Ministry of Health in March 2017 in relation to harm he suffered at a placement called Parklands. As neither Cooper Legal nor I have the documents about Paul still in our possession, my evidence has been created from documents I have previously prepared in Paul's case and those which are held on Cooper Legal's physical file and stored on their server.

Background

2. Paul was born on GRO-C 1951. He was diagnosed with an intellectual disability at the age of two and a half. Paul functions intellectually at a very basic level and his decision-making is quite limited. For instance, he will only make a decision about what he wants to eat and drink when he has been given a choice of two or three options. His vocabulary is very limited, and he expresses himself using words and short phrases. He does not formulate long sentences.
3. Paul has very little awareness of physical danger. He cannot be left on his own for any length of time.

Kimberley Hospital

4. After attending the local IHC Fairhaven School it was suggested Paul attend Kimberley Hospital where he would receive an education. I have recently instructed Cooper Legal to seek compensation for what happened to Paul at Kimberley.
5. At ten years of age Paul was taken to Kimberley, where he spent over 40 years. As a child I would sometimes visit with my parents and, in between times (particularly in school holiday times), Paul would come home to Hastings for two weeks.
6. When we visited Paul at Kimberley, he was in a ward with what seemed like about fifty others but could have been as low as thirty. They were all males and they slept in dormitory-type accommodation. At mealtimes they all sat at long tables where plates of food were placed in front of them and if it was not eaten quickly, others around Paul at the same table would grab his food. This ended up in a basic 'free for all' to get as much food as one could get. The assistants stood around watching. Later, Paul was diagnosed as a "choker" because he just swallowed his food so no-one else could get it. He is

GRO-C

much better now with his food, but on the odd occasion, needs reminding to chew his food properly.

7. Whilst at Kimberley, Paul went from being a handsome unmarked young boy to one who, each time he came home, had a new scar somewhere on his body. We were told this was from "fighting". His body to this day still carries scars from there. At one stage, my parents were told he had fallen and broke his elbow. To this day, he cannot straighten the arm. There was no report of how it actually happened - it was all just verbal.
8. There were fights going on quite a bit at Kimberley and the attendants only stepped in when they were not going to get injured. Sometimes the residents were handled very roughly by the attendants. I pleaded for my parents to take Paul out of there. I even offered to look after him in my own home after getting married with the support of my husband. My pleas fell on deaf ears, sadly.
9. As Paul got older, he was moved from one ward to another, supposedly to be with like folk. He was being given drugs which made him like a zombie. My suspicion is that the drugs were given to the residents to keep them quiet. He just sat and only spoke when spoken to.
10. As an adult I visited Paul and on one occasion went to where I was informed that I could find him. On having the door unlocked to let me in, the first thing I noticed was a young man sitting in a chair and he had restraints on his wrists and legs. I was shocked and when I asked why, I was told that he was a runner. This did not make sense to me as the door to the outside yard was locked anyway. There were about a dozen young men in there with special needs and only two assistants to look after them.
11. I would take Paul out for lunch and then to the park where he could go on the swings. He enjoyed those times.
12. I collected Paul in 2002 or 2003 to take him to my home in Onewhero for a week. He was drugged up so much, with one of the side-effects being dribbling. We had to change his t-shirt at least eight times a day to prevent him from being wet all the time. On his return, I asked to see his doctor, only to be told that she was in Kapiti and only came fortnightly (I think). I duly got her number, ringing when I got home and made a time to speak with her on her next visit to Kimberley. I travelled back down to Levin and asked if Paul could be taken off the meds that were causing him to dribble and his neck muscles to atrophy and replace them with something that was a bit kinder to his body. I felt I was treated like an ignorant person until I informed the Doctor that I had been in St John for quite a number of years and

knew that Paul had to be weaned off the old drugs and then weaned onto the new ones. His dribbling has improved considerably.

13. Of course, Paul was not the only person that was loaded up with drugs. On asking once, my parents were informed that he needed them because he was having seizures. Although Paul has an intellectual disability, he is by no means stupid! The residents were taken for walks around the Kimberley grounds and on these walks there was one person who used to have seizures. Naturally, they got a lot of attention and nice care. Paul witnessed this and began to lay on the ground and shake, with those around him thinking he was suffering a seizure.
14. In all my life I have only ever witnessed him having a true seizure once while at home on holiday. I dealt with it and he was fine. He has not had a seizure since leaving Kimberley.

Parklands

15. I came into contact with Cooper Legal after a reporter, Kirsty Johnston, contacted me, as she was investigating a story about abuse of residents who lived at Parklands, where Paul was placed after he left Kimberley. By that time, Parklands had been closed down and Paul had been moved.
16. Paul resided at Parklands between May 2005 and September 2012. His welfare was entrusted to me by our late parents and I have always done my best to look out for his interests and to ensure he is treated with appropriate care.
17. Paul had a terrible time at Parklands, which I describe in my affidavit.
18. Before Paul went to Parklands, I had a number of communications with the Ministry of Health about his placement. Unbeknownst to me, the Ministry of Health was, at that time, aware of significant, specific failings at Parklands. Indeed, I am aware that as at 19 April 2004, the MOH advised the owners of Parklands that it was not a preferred provider for people who were part of the Kimberley dis-establishment programme.
19. I also saw email communications which referred to an audit of Parklands highlighting serious concerns. This information was not made known to me at the time.
20. I learned on 29 October 2004, after several months of communications, that the Ministry of Health had agreed to Paul being placed at Parklands on the basis of a number of conditions being met by the owners, which I will call JE. I was told nothing of the conditions, only that JE had agreed to meet those conditions.

21. If I had known the extent of what was known to the Ministry of Health people in 2004, I would never have agreed to Paul being placed there.
22. Initially I was very impressed with the owners of Parklands, who I will refer to as NJ and LJ, and the facilities they offered. After having a look around, Parklands appeared to be everything we wanted and Paul liked it too, which was very important to me.
23. Everything went well for the first 18 months or so that Paul was there. After that, the cracks began to show.

Financial mismanagement

24. Paul had been at Parklands for some time when we were told that Parklands was supposed to be getting most of his benefit to go towards his cost of living. I was very unhappy about this, because in my view the money the proprietors were already getting for Paul, which was significant, was sufficient.
25. In addition, the proprietors did not properly account to me for monthly expenditure. Initially, the monthly expenditure seemed quite expensive, so I started to ask questions. In addition, Paul was not adequately fed, and his account would be charged for food purchased on day trips. Both my husband and I thought this should have been an expense taken from the money given to Parklands for food, rather than from Paul.
26. I became aware towards the end of Paul's time at Parklands, that his diet was bland and monotonous. This was supported by later audits.

Hygiene, neglect and psychological abuse

27. In addition, poor attention was paid by the staff at Parklands to Paul's personal hygiene.
28. Paul wet the bed virtually every night. The response was to remove his mattress, so that Paul had to sleep on a squab. The squab was a thin plastic-covered foam, much like a hospital one. There were no springs or support for Paul who had had a hip joint replacement. When I asked what had happened to Paul's regular mattress, I was told he had wet it so much, it stank, and staff had taken it down to the paddock and burned it. There was no consultation about this.
29. I found this particularly frustrating, because I had provided Parklands with mattress protectors for precisely this reason.

GRO-C

30. Paul does not have the capacity to look after his teeth properly. I sent a battery-run toothbrush to Parklands, which was not used.
31. Paul's bedroom door was locked every night, which in my view was a safety concern, given the number of evening staff rostered on.
32. On more than one occasion, the owners' dogs urinated and defecated on the carpet in Paul's room, so that the carpet was removed.
33. A staff member would squirt Paul with water whenever he was perceived to be becoming loud or aggressive. This was deliberate exploitation of a very genuine fear Paul has of water.
34. Residents would be made to pick up dog faeces from the yard each morning.
35. Both NJ and LJ would shout at residents and remove personal items to punish residents, despite the fact that all of them were people with disabilities.

Assaults

36. Paul was also assaulted at Parklands, both by staff and other residents.
37. Paul started to have unexplained injuries, despite not having a history of clumsiness.
38. NJ and LJ did not inform me about many ongoing injuries to Paul.
39. Staff told me "off the record" that Paul's injuries were the result of him being regularly assaulted by other residents. They told me that Paul had been pinched and punched by other residents but that no incident reports had subsequently been written up by the staff in charge.
40. On one occasion, Sunday 16 March 2008, a friend and work colleague of my husband telephoned one evening and told us that the police and ambulance were at Parklands. I immediately telephoned and asked if anything had happened to Paul. I was told that Paul had been the victim of an assault by another resident.
41. The staff member stated that Paul was in general, okay, but that he had had a head injury and the ambulance officer was checking him out.
42. I spoke to the ambulance officer who confirmed that Paul had a bleeding head and ear, and scratching and bruising to his right arm. The next day, I took Paul to my doctor to get him checked over thoroughly. The doctor noted the head injury and the fact that Paul's

head was swollen down the right-hand side, with the wound being down the left side of Paul's head between hairline and eye.

43. The doctor also observed that the arm injury was an injury on top of another injury which we had not been informed of.
44. About a month later, on 13 April 2008, Paul complained to a staff member that his right leg was sore, and he seemed to be limping. Three days later, on 16 April 2008, another staff member telephoned me to say that Paul's foot was sore, red and swollen and she had taken him to a Medical Centre. Paul's foot was x-rayed and displayed fractures.
45. About a week later I collected Paul for a visit. His foot was still red, and his lower leg was swollen. I took Paul to our doctor, who immediately said Paul should have a moon boot to help take down the swelling.
46. While we were at the doctor's, I showed the x-rays to a nurse. She stated that Paul's type of injury was likely to have come from somebody standing on Paul's foot.
47. When I told two staff members at Parklands, they said Paul had been assaulted by another resident while he was in his own bedroom. There was no incident report.
48. I was informed that, as a result of this, Paul was, in addition to being sedated, now being locked in his room at night. I have already explained my concerns about this.
49. On one occasion, I took Paul to the hospital. His shirt was lifted, and he had a massive bruise on the side of his ribs, which nobody was able to explain.
50. On 23 April 2006, Paul's medical records reported him as presenting at the local medical clinic with a fracture. On 9 May 2006, his medical records stated he had severe bruising noted on his left upper arm, to his shoulder. On 22 October 2006, Paul's records stated that he had fallen over and hurt his shoulder. Another record of the same incident stated that Paul "somehow" had managed to sustain the injury.
51. Much later on, after taking court action, I saw handwritten notes from March and April, recording that Paul had been kicked and punched by other residents, but no incident reports had been prepared. The notes also stated that LJ had screamed and cursed at residents many times. They also referred to Paul having unexplained bruises all the time.

52. On 6 April 2009, Paul was again at the medical centre. This time the records stated that he fell in the bath and bashed his forehead.
53. Twice in 2010, Paul presented at the medical centre following incidents. On 12 April 2010 his records stated he slipped on a step and grazed his lower leg – which had become infected. On 25 September 2010 Paul was described as having an infection from a scratched arm.
54. Another record described Paul as having had an “unwitnessed fall” on 10 May 2010, again ending up with a fracture. Another document completed by a staff member stated that Paul “tripped and fell” causing the injury.
55. In October 2010, Paul was recorded as being scratched on the head by another resident. On 25 November 2011 an incident report stated Paul had been bitten on the cheek by another resident.

Medication

56. I was also very unhappy about how Paul’s medication was managed. As Paul’s welfare guardian, I was supposed to approve any sedative medication. However, at Parklands, Paul was routinely sedated without my consent.

Complaints

57. I continually tried to take steps to protect Paul and to stand up for his rights.
58. In 2006, I contacted the police about a staff member from Parklands, who had assaulted Paul. This eventuated in a court case which was held in Pukekohe. The staff member was charged with assault and she was asked to leave Parklands.
59. I regularly voiced my concerns regarding the poor quality of residential care and requested the opportunity to explore alternative options for Paul.
60. In April 2008, attempts finally began to be made to find an alternative placement for Paul in light of the concerns I had raised. However, in the event, he remained at Parklands until late 2012, with very little follow-up.
61. It was not until July 2012 that the Ministry of Health wrote to Paul, saying that some people had visited Parklands the previous week and had spoken with Paul. A report had been sent to the Ministry of Health. At that point the Ministry had decided to put two temporary managers into Parklands to make improvements.

62. I also received a letter in July 2012 which advised me that the Ministry of Health had "recently" received a complaint raising several serious concerns about Parklands. As a result, the Ministry of Health had audited the services provided in the previous week. The preliminary findings of the audit had substantiated some of the allegations and raised significant concerns about Parklands. I was also advised that temporary managers would be starting at Parklands in order to improve the quality of service. I discovered that the temporary managers had been there for quite some time before I got the letter.
63. On 3 September 2012, Paul was informed by letter that the proprietors were no longer able to continue operating Parklands. I was also informed about this.
64. Paul was moved and continues to reside at a residential whanau home. From there, he attends activities, including going on twice weekly walks, movie visits, one-on-one walks and attending Whare lunches and picnics.
65. His quality of life is significantly better than it was at Parklands.

History of proceedings

66. I am aware that Cooper Legal asked for funding to take a legal claim against the Ministry of Health (and potentially other entities) in respect of the abuse and neglect suffered by Paul and potentially others at Parklands.¹
67. I am aware that the file was sent to a Specialist Adviser at Legal Aid, before an interim grant of 10 hours of funding was provided on 13 August 2013.² I am aware that Cooper Legal was asked to provide information about how long Paul was at Parklands and where he resided since. I was asked to provide copies of medical reports recording evidence of assaults on Paul and to provide evidence of complaints at the time. Cooper Legal was asked to provide details of the legal status of Paul at Parklands, including any contractual arrangements with the Ministry of Health. Cooper Legal was also asked to address the "obvious evidential difficulties" in gathering evidence because of Paul's level of disability.
68. One of the first tasks Cooper Legal set out to do was collect in relevant records. This included records held by the Ministry of Health while he was resident at Parklands. The Ministry of Health provided

¹ Letter from Cooper Legal to Legal Aid, 25 July 2013.

² Letter from Legal Aid to Cooper Legal, 13 August 2013.

some documents to Cooper Legal in a letter dated 20 September 2013.³

69. I am aware that Cooper Legal wrote to the Chief Legal Advisor of the Ministry of Health on 21 October 2013.⁴ The letter made a settlement offer for Paul. The letter referred to the documents Cooper Legal had obtained from the Ministry of Health and from me. In addition, the letter referred to a statement I had completed earlier on, detailing my complaints. The letter also referred to the medical records referring to Paul's numerous injuries.
70. The letter then went on to set out why Cooper Legal believed the Ministry of Health was legally liable for what had happened to Paul at Parklands. Part of that analysis referred to complaints known to the Ministry of Health before Paul was placed there and during the time he remained there.
71. I am aware that Cooper Legal proposed a settlement including: payment to Paul of \$150,000; payment of his legal fees; and a letter of apology. Cooper Legal explained to me that the \$150,000 was based on the fact that Paul was entitled to damages for breaches of his rights under the Bill of Rights Act.
72. I remember it took some time for the Ministry of Health to respond. Cooper Legal was keeping me up to date with what was happening.
73. I am aware that Cooper Legal finally received a response on 23 December 2013.⁵
74. The Ministry of Health denied it was responsible, in any way, for what had happened to Paul at Parklands. I understand this was because the Ministry took the position that Paul was not in the Ministry's care and also that, whilst the Ministry funded Parklands, the proprietors were not employees or agents of the Ministry of Health.
75. My lawyers were told to file a statement of claim if the claim was to be pursued.
76. It is fair to say, I was disappointed with this response. I told Cooper Legal that I wanted to take the claim further on Paul's behalf. In my mind, the Ministry of Health was supposed to represent the people and should be responsible for what happened to those who it placed and paid for to stay in a particular placement.

³ Letter from the Ministry of Health to Cooper Legal, 28 September 2013.

⁴ Letter from Cooper Legal to the Chief Legal Advisor of the Ministry of Health, 21 October 2013, marked "private and confidential".

⁵ Without prejudice letter from Crown Law to Cooper Legal, 23 December 2013.

77. I am aware that Cooper Legal told Legal Aid that the Ministry of Health had instructed Crown Law to act and that the Ministry was denying any liability.
78. Cooper Legal asked Legal Aid for funding to file Paul's claim in the High Court.⁶ This funding was approved in a letter dated 23 January 2014.⁷
79. On 28 March 2014, proceedings were filed in the High Court at Wellington on behalf of Paul⁸. One of those papers was an application for me to be appointed as Paul's litigation guardian.
80. I am aware that the court documents were sent to Crown Law on 7 April 2014.⁹
81. On 30 May 2014, my lawyers received the Ministry of Health's statement of defence.¹⁰ On 5 June 2014, Crown Law sent over some further documents that were relevant to Paul's claim.
82. Cooper Legal contacted me on 10 June 2014, by email,¹¹ to let me know I had been appointed as litigation guardian for Paul. Cooper Legal also explained to me that the Ministry of Health defence said that the Ministry owed Paul no duty and had not breached any duty to Paul, on the basis that I, rather than the Ministry of Health was Paul's legal guardian. I was sent the statement of defence to read and comment on.
83. I am aware that Crown Law asked Cooper Legal to meet with Crown Law and the Chief Legal Advisor from the Ministry of Health by email dated 30 June 2014. In response, Cooper Legal expressed reluctance to attend a meeting, unless the Ministry of Health intended to engage in active settlement discussions.¹²
84. I am aware that, in response, Cooper Legal was advised by Crown Law that the Ministry was not prepared to engage in any meeting concerning settlement unless it fully understood the arguments being advanced on behalf of Paul.
85. In response to that email, I am aware that Cooper Legal sent another letter, this time to Crown Law, explaining why (from Cooper Legal's

⁶ Letter from Cooper Legal to Legal Aid, 14 January 2014.

⁷ Letter from Legal Aid to Cooper Legal, 23 January 2014.

⁸ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General*, 28 March 2014.

⁹ Letter from Crown Law to Cooper Legal, 7 April 2014.

¹⁰ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Statement of defence, 30 May 2014.

¹¹ Email from Cooper Legal to Gay Rowe, 10 June 2014.

¹² Without prejudice email from Cooper Legal to the Ministry of Health, 30 June 2014

perspective) the Ministry of Health could not possibly succeed in defending the claim.¹³

86. While I do not understand all the “ins and outs” of that letter, I do understand that Cooper Legal was saying that the Ministry of Health contracted with the proprietors to provide care to vulnerable health care recipients, like Paul. The Ministry of Health was the funder of the services. Throughout the period of contracting, the Ministry of Health undertook audits and reviews of the services being provided by the proprietors. Throughout the time Paul was at Parklands, the reviews showed there were problems. Cooper Legal also argued that the providers were acting as agents for the Ministry and therefore the Ministry was responsible for their conduct (including the conduct of their staff).
87. I am aware that Cooper Legal was asking for the claim to be resolved without the need for a hearing.
88. Because the Ministry of Health continued to maintain it was not liable for what happened to Paul, discussions took place as to what the “next step” would be. It was agreed that it would be a helpful “next step” to have a Judicial Settlement Conference.
89. I am aware that Cooper Legal received a letter from Crown Law on 3 October 2014¹⁴ which stated that the legal issues were key and that the parties were some way apart. The letter said that resolution of the legal issues was a significant matter for the Ministry of Health and had wider implications for the Crown. Nevertheless, the Ministry of Health was willing to attend a JSC to look at the possibility of settlement. Eventually, the Judicial Settlement Conference was fixed for 23 March 2015¹⁵.
90. In advance of the JSC I am aware Cooper Legal prepared “will say” statements from witnesses including me and three former Parklands employees who gave evidence about how Paul was neglected and mistreated. Two of those witnesses saw Paul being assaulted by staff and other residents.
91. I am also aware that my lawyers prepared a statement of position dated 16 March 2015. I am aware that the Ministry of Health filed a similar statement of position on 17 March 2015.
92. I am aware that the Judicial Settlement Conference was a confidential process and I am unable to talk about it, except in very general terms. I attended the JSC with my husband GRO-B and Paul (who only stayed

¹³ Without prejudice except as to costs letter from Cooper Legal to Crown Law, 2 July 2014.

¹⁴ Without prejudice save as to costs letter from Crown Law to Cooper Legal, 3 October 2014.

¹⁵ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Judicial Settlement Conference, 23 March 2015.

in the courtroom for a short period of time). I was supported by two lawyers from Cooper Legal. I remember that there were two representatives from the Ministry of Health, including the Chief Legal Advisor and two lawyers from Crown Law.

93. It is probably sufficient to say that I was disappointed with the outcome. We did not settle at the JSC, because it was very obvious that the two sides were really far apart. That meant that we had to seriously consider progressing Paul's claim towards trial.
94. I have seen Cooper Legal's reporting letter to Legal Aid, following the JSC, dated 13 April 2015.¹⁶
95. As the letter said, we were very far apart. We had an offer on the table of \$150,000, whereas coming to the JSC MOH had not made any offer at all. It was also clear that the Ministry of Health was not willing to offer anything above about \$20,000.
96. As Cooper Legal said to Legal Aid, it seemed that the approach taken by the Ministry of Health was driven almost entirely by policy considerations. I came to understand that the Crown has contracts with some 900 organisations in contexts which are similar to the contract between the Ministry of Health and the proprietors of Parklands.
97. On 25 March 2015, Crown Law sent a notice asking that we provide a lot more details about Paul's claim.¹⁷
98. Over the course of the next few months, I am aware Cooper Legal and Crown Law collected in relevant documents about Paul's case and prepared affidavits of documents.
99. I am also aware that Cooper Legal filed an amended claim for Paul on 20 September 2015.¹⁸ The Crown filed its amended statement of defence on 16 October 2015.¹⁹ I know Cooper Legal was very surprised to see that the amended statement of defence raised a limitation defence, which I understand to mean that Paul should have brought his claim earlier than he did. I know Cooper Legal was very surprised about this, given the extent of Paul's intellectual disability.

¹⁶ Letter from Cooper Legal to Legal Aid, 13 April 2015.

¹⁷ Notice from Crown Law to Cooper Legal, 25 March 2015.

¹⁸ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Amended statement of claim, 20 September 2015.

¹⁹ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Amended statement of defence, 16 October 2015.

100. I am aware that in a memorandum filed in the High Court on 1 October 2015,²⁰ both Cooper Legal and Crown Law asked for a four-week trial date to be set down after 21 November 2016.
101. At that time, the High Court did not provide a trial date, but suggested a further Case Management Conference in December 2015.²¹
102. I am aware that at the beginning of 2016, while both Cooper Legal and Crown Law continued to collect in documents that were relevant to Paul's claim, the possibility of continuing settlement discussions had again been raised by Cooper Legal. By then, a different lawyer was dealing with the claim (the third one at Crown Law) and had indicated the Ministry of Health was willing to discuss settlement.
103. I am aware that Ms Cooper and Ms Ross (another lawyer from Cooper Legal) met with Sarah Leslie from Crown Law and Victoria Casey QC on 2 March 2016. The purpose of this meeting was, as I understand it, to again discuss the issues and see whether the claim would be settled. Ms Ross followed up after the meeting with a letter dated 4 March 2016.²²
104. In that letter, Ms Ross confirmed that I had no personal agenda in the litigation and my only concern was to see that my brother received an acknowledgment and financial compensation as a result of the claim.
105. My lawyers expressed their concern about the Ministry of Health wanting to effectively blame me for Paul being placed at Parklands and remaining there.
106. Although I do not really understand it, I am aware, again, that the Ministry of Health was concerned about the precedent effect of settling Paul's claim, because of its contractual position with Parklands. In the letter, Cooper Legal explained that Cooper Legal had already settled a number of claims where abuse had occurred at placements with similar contractual arrangements. Cooper Legal also proposed that a confidential settlement could be entered into so that the "floodgates" scenario could be avoided.
107. At that stage, my lawyers were cautiously hopeful that the claim might settle, but noted it was early days.
108. I am aware that Crown Law wrote to Cooper Legal on 1 April 2016²³ asking Cooper Legal to give some examples of cases where the Crown had settled claims in similar situations to that involving the

²⁰ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Joint memorandum of counsel in advance of case management conference, 1 October 2015.

²¹ Minute of Justice Ellis, 2 December 2015.

²² Without prejudice letter from Cooper Legal to Crown Law, 4 March 2016.

²³ Letter from Crown Law to Cooper Legal, 1 April 2016.

Ministry of Health and Parklands. I am aware that Cooper Legal responded to that letter on 19 April 2016.²⁴ By that time, Cooper Legal had discussed the issue of agreeing to a confidentiality clause with me and I had said this did not concern me. This information was also communicated to Crown Law in the letter. In that letter, Cooper Legal proposed that Paul's claim be paid by a lump-sum payment of \$90,000, along with payment of the debt owing to Legal Aid (at the usual 50%) and providing Paul a letter of apology.²⁵

109. I am aware that by June 2016, settlement discussions had reached a stalemate. Cooper Legal let me know that Victoria Casey QC had telephoned Ms Ross to confirm the highest the Ministry of Health was prepared to go was \$25,000. I understand this conversation took place on 18 May 2016.
110. This information was communicated to Legal Aid in a letter dated 20 June 2016.²⁶ As Cooper Legal had advised Legal Aid, it had been agreed that the next step was to start preparing Paul's claim for trial. Cooper Legal stated that there was little point in waging a paper war with Crown Law because the Crown had already been provided with full information and, further, it seemed to Cooper Legal then that the Ministry of Health simply did not want to settle the claim.
111. On 29 June 2016,²⁷ Paul's claim was given a trial date of 1 May 2017 for six weeks. This information was communicated to Legal Aid on the same date.
112. I am aware that Cooper Legal and Crown Law reached agreement on a trial timetable. This agreement was contained in a consent memorandum dated 11 July 2016.²⁸
113. I understand that when Cooper Legal told Legal Aid that a trial date had been set, Legal Aid took some months to grant the funding necessary to progress Paul's claim. I am aware that Cooper Legal was required to provide further information, including why Paul should not have accepted the low offer. This correspondence took place between July 2016 and September 2016.²⁹
114. I am aware it was not until 20 September 2016³⁰ that Legal Aid finally advised Cooper Legal that the file had been reviewed and that Legal

²⁴ Without prejudice letter from Cooper Legal to Crown Law, 19 April 2016.

²⁵ Without prejudice letter from Cooper Legal to Crown Law, 19 April 2016.

²⁶ Letter from Cooper Legal to Legal Aid, 20 June 2016.

²⁷ Notice of date of hearing, 29 June 2016.

²⁸ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Consent memorandum, 11 July 2016.

²⁹ Letter from Legal Aid to Cooper Legal, 20 July 2016. Letter from Cooper Legal to Legal Aid, 21 July 2016. Email communications between Legal Aid and Cooper Legal, 27 July 2017. Letter from Cooper Legal to Legal Aid, 19 August 2016.

³⁰ Letter from Legal Aid to Cooper Legal, 20 September 2016.

Aid accepted that the informal offer of \$25,000 should not be accepted. On receiving that letter, I am aware that Cooper Legal immediately asked Legal Aid for funding to prepare for trial, including instructing two experts to support Paul's case. I am aware that Cooper Legal was provided with trial funding by Legal Aid in late September 2016.³¹ That funding included funding for the two experts.

115. I am aware that over the next few months, Cooper Legal worked to prepare evidence for Paul's case. Both my husband and I agreed to give evidence. I am aware that three former Parkland staff members also agreed to give evidence, as well as the grandmother of another Parklands resident who had suffered abuse. In addition, I am aware that evidence was being prepared on behalf of a disability advocate who had complained to the Ministry of Health about Parklands before Paul had been placed there.
116. I am aware that Cooper Legal served eight briefs of evidence on Crown Law on 28 October 2016. Another four were still in train. By that time, Cooper Legal had identified two additional witnesses who could give evidence to support Paul's case.
117. The evidence provided to the Crown included the expert evidence of Dr Olive Webb, a disability expert who assessed Paul to provide evidence about the likely psychological damage he had incurred because of the abuse he suffered at Parklands. The second expert was Sharon Brandford, another disability expert, who canvassed an extremely wide range of "best practice issues" relevant to the care Paul received at Parklands. She also addressed the Ministry of Health's core defences about its not being responsible for placing Paul at Parklands and that it appropriately undertook its monitoring and oversight obligations.
118. I remember that one of the things that came to light during this timeframe, is that Paul had been sexually assaulted by two Parklands staff members. This information was reported to Cooper Legal by a former staff member who agreed to give evidence in the trial. Because of that new information, Cooper Legal was required to amend the statement of claim. I am aware this was filed and served on 2 December 2016.³²
119. I am also aware that, during this period, new documents were coming to light, particularly from the witnesses. I am aware that these had to be disclosed to Crown Law in a formal way, which required me to formally list those documents.

³¹ Letters from Legal Aid to Cooper Legal dated 26 September 2016 and 28 September 2016.

³² CIV-2014-485-4035 *Paul Owen Beale v Attorney-General Second* amended statement of claim, 2 December 2016.

120. I am aware that after the briefs of evidence were served on Crown Law, along with the amended statement of claim, Crown Law asked to meet with the lawyers from Cooper Legal to discuss the claim. I am aware this was because of the more serious allegations that were being made in the briefs of evidence and which were in the amended statement of claim.
121. In an email from Victoria Casey QC to Cooper Legal dated 9 December 2016,³³ Cooper Legal was advised that a decision had been made that the sexual assault allegations, along with the allegations of very serious physical assaults on residents, ought to be referred to police. Victoria Casey QC also advised that because of the very serious nature of the allegations made against named individuals, they should be given the opportunity to respond, probably by way of joinder as named defendants. A meeting was asked for to see whether the parties could see a way forward as soon as possible.
122. During that timeframe, I had a sick sibling and did not have the time to consider the implications of all this.
123. I am aware that Crown Law's next step was to file an application in the High Court on 12 December 2016,³⁴ asking for permission to pass on the amended statement of claim and witness briefs to the police, and saying that a number of additional defendants should be joined to the claim, including NJ and LJ, along with individual staff members named in the statement of claim. I understand that Crown Law asked that the issue be dealt with as a matter of urgency.
124. I am aware that Cooper Legal opposed the matter being dealt with urgently. In a memorandum of the same date, 12 December 2016,³⁵ Cooper Legal explained that either direction, if granted, would have a significant effect on the current trial timetable. For example, if a police complaint led to any prosecution, then it was likely the trial would have to be paused until the determination of any criminal charges. Further, adding additional defendants would require additional time because they would need to instruct their own lawyers, review the pleadings and the evidence, and prepare their own evidence.
125. I am aware Cooper Legal also said this matter was not urgent.
126. I am aware that a High Court Judge issued a Minute on 15 December 2016.³⁶ That Minute said that the matters were not sufficiently urgent to be given priority over other urgent matters prior to Christmas. The

³³ Email from Victoria Casey QC to Cooper Legal, 9 December 2016.

³⁴ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Defendant's memorandum seeking urgent telephone conference, 12 December 2016.

³⁵ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Memorandum on behalf of counsel for the plaintiff, 12 December 2016.

³⁶ Minute of the High Court, 15 December 2016.

High Court also accepted that the issues required written submissions and an appearance.

127. In the face of that, I am aware Crown Law filed a second memorandum on 22 December 2016.³⁷ That memorandum advised that the Ministry of Health had already advised the Police that the allegations had been made and the Police were now requiring access to the relevant witness statements as soon as possible. On my behalf, Cooper Legal had refused permission for those witness briefs to be given to the Police. I am aware that Crown Law was still asking that the Court make directions earlier than had been proposed by Cooper Legal.
128. I am aware that Cooper Legal responded on 23 December 2016,³⁸ complaining that Crown Law had, for a second time, filed a memorandum seeking an urgent teleconference in the knowledge that Cooper Legal opposed that. I am aware that Cooper Legal explained that neither Paul, nor us as his family, wanted to be forced into a criminal process without our consent. Cooper Legal also informed the Court that I was dealing with significant and distressing personal issues at that time and did not want to even think about, let alone be forced into a criminal process, particularly on an urgent basis.
129. Once again, the High Court refused to deal with the matter on an urgent basis. I am aware it allocated a fixture date of 3 March 2017 to determine the issue.
130. I remember being relieved about that. One of the issues that concerned me about this becoming a criminal case was that the Ministry of Health would not then be held to account for its lack of duty to care for my brother who cannot speak for himself.
131. I am aware that at the start of 2017, Crown Law was raising issues about the evidence filed on behalf of the disability advocate.³⁹ I am aware that this was formally recorded in a memorandum of counsel dated 25 January 2017, filed by Crown Law.⁴⁰
132. I recall, that out of the blue on 7 February 2017, Cooper Legal received an offer to settle Paul's claim.⁴¹ The letter from Crown Law said the Ministry of Health had been "reviewing its approach" to the case and had instructed Crown Law to raise the possibility of a prompt settlement before any further costs were incurred.

³⁷ Memorandum of Crown Law, 22 December 2016.

³⁸ Cooper Legal opposition to CL's memorandum, 23 December 2016.

³⁹ Letter from Crown Law to Cooper Legal, 17 January 2017.

⁴⁰ Crown Law memorandum of counsel, 25 January 2017.

⁴¹ Without prejudice save as to costs offer from Crown Law to Cooper Legal, 7 February 2017.

133. The letter stated, again, was that one of the key concerns for the Ministry of Health had been the "precedent impact" of the case. It is clear that the Ministry of Health was worried that a settlement might bring about other claims by former residents at Parklands.
134. The Ministry of Health made a full and final settlement offer of \$45,000. In addition, the Ministry agreed to meet Paul's legal aid debt, noting that part of the debt could be written off. I understand this is because there is an arrangement between Legal Aid and the Ministry of Health for Cooper Legal clients, that the Ministry will pay one-half of the legal costs and the rest will be written off.
135. I remember it was a condition of the settlement that the Ministry of Health required my consent, on behalf of Paul, to disclose the witness statements to the Police. This was on the grounds that the Ministry of Health would "not be party to a settlement which having the effect of 'hiding' those allegations or allowing them to be dropped without independent review by the appropriate investigatory agents".
136. The letter concluded by saying that the basis of the offer was to avoid further costs and therefore asked for a response as soon as possible.
137. On 8 February 2017 Cooper Legal responded to the settlement offer.⁴² The letter stated that Paul's claim warranted a payment of around \$50,000 at least. Cooper Legal also asked Crown Law whether the settlement would be made on a confidential basis, noting my preference that any settlement not be confidential.
138. Further, I was keen for the Ministry of Health to provide Paul with a letter of apology and/or acknowledgment of his experiences at Parklands. Cooper Legal also asked whether the Ministry of Health could contribute a small sum to assist with one-on-one services for Paul, as he did not then have any opportunities for one-on-one outings with a caregiver.
139. With regards release of the witness statement, Cooper Legal asked what statements the Police should have access to.
140. On that basis, Cooper Legal made a counter-offer asking for: (a) a \$50,000 payment for Paul; (b) a \$5,000 - \$10,000 payment to Paul to specifically provide for his ongoing one-on-one support caregiving needs; payment of Paul's legal aid debt; and a letter of apology and/or acknowledgment.
141. Cooper Legal suggested that a meeting take place to discuss the settlement offer.

⁴² Private and confidential letter from Cooper Legal to Crown Law, 8 February 2017.

142. I am aware that a meeting took place on 15 February 2017.
143. On the day of the meeting, Crown Law made an offer to settle Paul's claim by payment of \$55,000 and payment of the Legal Aid debt in the usual way (in other words payment of one-half). The Ministry of Health wanted the agreement to be confidential, presumably because of the potential precedent effect.
144. It is fair to say **GRO-B** and I were delighted to receive this offer. By that time, three of four witnesses had consented to their briefs of evidence being disclosed to the Police. It was agreed that a joint memorandum would be filed in the High Court informing the High Court that the parties had been discussing settlement and that a hearing was no longer required to address the issue of referring witness statements to the Police. This was recorded in a consent memorandum dated 17 February 2017.⁴³
145. I am aware that it still took some time for Cooper Legal and Crown Law to reach an agreement about terms of the settlement agreement.
146. In due course, the settlement agreement was sent to me to sign. After that, it was signed by a representative from the Ministry of Health. The finalised settlement agreement is dated 13 March 2017.⁴⁴ While the agreement includes a confidentiality clause, I have been advised that this has been waived by the Ministry of Health for the purposes of the Royal Commission.
147. As part of the settlement, Paul received an apology letter. The first apology letter expressed the Ministry's "genuine apology" for the conditions Paul had to endure at Parklands. The letter also expressed the hope that with the resolution process behind Paul, he would be able to move forward with a sense of peace.⁴⁵ I was gobsmacked at the terms of the letter as it felt like the Ministry was just paying lip-service to the meaning of an apology. I also felt the letter demonstrated that the Ministry had no comprehension of where Paul is at, in terms of his ability to understand.
148. I am aware that Cooper Legal advocated for a more meaningful apology letter to be prepared and this was attended to later and provided to Paul through Cooper Legal.⁴⁶
149. I am aware that the claim was formally discontinued in the High Court on 24 March 2017.⁴⁷

⁴³ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Consent memorandum, 17 February 2017.

⁴⁴ Settlement Agreement, 13 March 2017.

⁴⁵ Apology letter from the Ministry of Health to Paul Beale, 15 March 2017.

⁴⁶ Amended apology letter from the Ministry of Health to Paul Beale, 30 March 2017.

- 150. Although this was a long process for us to finally reach settlement of Paul's case, I am aware that Cooper Legal found the lawyers from Crown Law (including Victoria Casey QC) very pleasant to deal with. I am aware that this was communicated to Una Jagose, the Solicitor-General in a letter dated 31 March 2017.⁴⁸ The letter was copied to Victoria Casey QC and Sarah Leslie. In that letter, Cooper Legal acknowledged the professionalism, courtesy and co-operative manner in which both lawyers had dealt with Cooper Legal in reaching a resolution of Paul's claim.
- 151. The letter referred to the fact that most issues, even contentious ones, had been dealt with mainly by consent. The letter also referred to the productive settlement negotiation process, which had resulted in a good outcome and an end to the proceeding.
- 152. I am aware that Victoria Casey QC thanked Cooper Legal for the kind words, which she said she definitely reciprocated.⁴⁹
- 153. From my perspective, I was and remain grateful to Cooper Legal for the hard work involved in negotiating an outcome for Paul. I was also very grateful to others who had helped, particularly the two experts, Olive Webb and Sharon Brandford.

Sworn at Pukekohe)
 by **Raewyn Gay Rowe**)
 this 21st day of February 2020)
 before me:)

GRO-C

GRO-C

Mary Dawson
 Deputy Registrar
 District Court

**A Solicitor of the High Court of New Zealand/
 A Registrar of the High Court of New Zealand/
 Justice of the Peace**

⁴⁷ CIV-2014-485-4035 *Paul Owen Beale v Attorney-General* Notice of discontinuance, 24 March 2017.
⁴⁸ Letter from Cooper Legal to Una Jagose, 31 March 2017.
⁴⁹ Email communications between Victoria Casey QC and Cooper Legal, 3 April 2017.