Witness Name: Grant Ashley Cameron
Statement No. 1 of 2
Exhibits: 6
Dated: 1 June 2021

ROYAL COMMISSION OF INQUIRY INTO HISTORIAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH-BASED INSTITUTIONS (RE: LAKE ALICE)

WITNESS STATEMENT 1 (of 2) OF GRANT ASHLEY CAMERON

I, Grant Ashley Cameron, will say as follows: -

1. I am the Principal of GCA Lawyers, a national class action practice, based in Christchurch, Level 1, Duncan Cotterill Plaza, 148 Victoria Street, Christchurch 8140.

2. Between 1996 and 2006, my firm, Grant Cameron & Associates (**GCA**) represented a large number of claimants who brought actions against the Crown in relation to events which occurred at the Child and Adolescent Unit (***"the Unit"***) on the Lake Alice Psychiatric Hospital grounds during the 1970s.

3. The groups of claimants whom I represented consisted of individuals residing at the Unit between 1972 and 1978 and who were 16 years old or younger at the time of their stay. Those individuals alleged they suffered abuse in various forms whilst at the Unit.

4. The actions formed two parts. Events in relation to Part I took place between mid-1996 and November 2001 and in Part 2 (including the Zentveld litigation), between November 2001 and November 2006.

5. I have been asked by the Abuse in Care Royal Commission of Inquiry ***("the Inquiry" or "the Royal Commission")*** to provide a witness statement/s setting out my involvement in the Lake Alice civil litigation and the events which occurred leading up to the settlement of my clients' claims. I have prepared two witness statements which address events arising in relation to Lake Alice. I refer to the first Determination process conducted by Sir Rodney Gallen as the 'Part I' process. Following its completion, the then Prime Minister, Helen Clark, announced a second Determination Process and my firm was asked to act for a small group of people in that process. That second Determination process was also conducted by Sir Rodney Gallen but as it was quite independent of the first process, I refer to that second Determination process as the 'Part 2' process. Finally, following the completion of the Part 2 process, my firm acted for Paul Zentveld, a client who brought proceedings against the Ministry of Health. For these reasons two witness statements have been prepared and the second statement will also address the Zentveld proceedings.

6. This is my first statement and I deal with:

- the background to the matter generally,
- how I initially became involved in the case,
- initial strategy and media involvement,
- how prospective clients were vetted,
- my efforts to secure funding and the fee arrangement between my firm and its clients,

- the initial facts presented to us and my efforts to secure an admission of liability and agreement from the Crown as to an ADR process,
- details of when and why proceedings became necessary,
- the settlement process which followed and the involvement of Sir Rodney Gallen (Part I claimants),
- the matter of a Law Society Fee Complaint and the outcome of the same,
- details of the complaints made to the Police and the Medical Practitioners Board Victoria (**MPBV**).

7. My second statement deals with the Part 2 claimants and process, and with the Zentveld proceedings.

8. On 23 September 2020 my firm was served with a notice pursuant to Section 20 of the Inquiries Act 2013 requiring it to provide the Royal Commission with documents and materials contained in its files compiled during its conduct of the case. I can confirm, my firm complied with that notice on 25 September 2020, by supplying the requested documents and materials together with the requisite statutory declaration.

9. My brief has been prepared with due regard to my confidentiality obligations in respect of my former clients' interests, the protection of solicitor-client and litigation privilege, and the confidential nature of the resolution process itself. For these reasons, where appropriate, I have elected to protect the identity of certain individuals and so refer to such persons numerically or by other label. I have independently supplied the Royal Commission with a Schedule to identify those persons. The numerical order in which

clients are referred to in my statement do not reflect the order in which they became my clients.

Background

10. Lake Alice was a Psychiatric Hospital located near Whanganui, which housed persons committed under the relevant mental health legislation of the time including individuals then referred to, as "criminally insane". It was a medical institution focused on psychiatric care for those in need of the same.

11. In the early 1970's, the Department of Social Welfare (DSW) had responsibility for many state wards and faced housing difficulties for those wards. Apparently, when DSW discovered that there were some empty dormitories on the grounds of Lake Alice Hospital, a decision was made to use these facilities and to start a special unit to cater for these children.

12. The Unit was created during 1972 and was situated within the grounds of the Lake Alice Psychiatric Hospital.

13. Children between the ages of 8 and 16 years (and the occasional 17-year-old) resided at the Unit but our later inquiries did not reveal any who had been formally committed for treatment under the Mental Health legislation of the time.

14. Dr Leeks, a Psychiatrist based in Palmerston North (and at the time, nationally recognised as specialising in the care of children and adolescents) was given overall responsibility for the management of the Unit.

15. During my firm's preliminary investigations, inquiries indicated that the Unit had no legal or functional link with the operations of the Lake Alice Psychiatric Hospital itself. This was confirmed in the Report of the Commission of Inquiry into 'The Case of the Niuean Boy' (18 March 1977), in which it is stated "*Dr Leeks is in an unusual position and perhaps something ought to be done to give him better protection. He is employed by the Palmerston North Hospital Board. Lake Alice Hospital is conducted by the Department of Health. Dr Leeks is seconded to the Department of Health to run the Lake Alice Hospital Unit. Dr Pugmire, the Medical Superintendent of Lake Alice Hospital, told the Commission that he has a written direction not to involve himself in clinical matters in the adolescent psychiatric unit…the unit has nothing to do with the hospital board which is Dr Leeks' employer. Nor does it come under Dr Pugmire's jurisdiction in the normal way*". This created an unusual situation where practically, Dr Leeks was in a position of complete autonomy in which he was not subject to any or proper oversight.

16. By 1976 allegations of abuse came to light. The allegations included reports that Dr Leeks and the nurses at Lake Alice were administering Electroconvulsive Therapy (**ECT**) and injections of paraldehyde as a form of punishment. There were further allegations of physical and sexual abuse and unlawful confinement.

17. The allegations of abuse at the Unit were raised by Johnathan Hunt in Parliament in 1976. I understand the Ministers of Health and Social Welfare at the time, denied that medical procedures were being used as a form of punishment and resisted calls for an Inquiry.

18. On 27 January 1977, Judge Mitchell was appointed to hold a Commission of Inquiry into the care of one young person, following a complaint from his mother or grandmother. The Inquiry heard evidence from a range of parties (not including any other children at the Unit) and concluded on 18 March 1977 when the Report of the Commission of Inquiry into 'The case of a Niuean Boy' was issued. The scope of the Inquiry was limited to only the treatment of that young boy. Judge Mitchell stated in his report: "*... I am certain that ECT was not used at Lake Alice Hospital as a punishment*". That young boy later became a client of my firm whom I shall refer to herein as Client 1.

19. Also, in January 1977, the Ombudsman received a separate complaint from another individual's parents that the staff at Lake Alice had administered unauthorised and inappropriate treatment at Lake Alice. The individual who was the subject of that complaint later become a client of my firm (Client 2). This investigation was also limited in scope to the complaints made by that one individual. There had been consultation with some experts following which Sir Guy Powles issued his finding (April 1977). It stated: "*there is a general consensus of opinion and the general practice is that ECT pays little or no part in the treatment of children…. in most circumstances cannot be justified*". It was recommended that the "*Department of Health ensure that the Medical Supt of Lake Alice Hospital has closer control over and final responsibility for the administration and operation of the…Unit*".

20. As a result of further complaints, calls to Parliament for a full Commission of Inquiry continued throughout 1977. Then then Minister of Health, Hugh Templeton, maintained an Inquiry was not needed.

21. A Police Inquiry was conducted in January 1978 but nothing seemed to result.

22. The Unit ceased operating and was closed in 1978. Dr Leeks was dismissed in July 1978 and later took up residence in Victoria, Australia.

23. In 2006, whilst the Medical Practitioners Board Victoria was in the process of investigating complaints against Dr Leeks, he surrendered his Australian medical licence, thus ending the Board's investigation.

24. In 2017 a former client of my firm, Paul Zentveld, made a complaint to the United Nations Committee Against Torture. His complaint was upheld in 2019.

How I came to be involved

A referral

25. In September 1996, I received a telephone call from a lawyer at a Blenheim law firm. The lawyer informed me their firm had a client who had been sent to Lake Alice Hospital in 1972 when he was 13 years of age, as a ward of the state. The client alleged he had been abused at Lake Alice but given the obvious limitation problems, the lawyer asked if I might accept a referral and deal with their client directly to see if something could be done. Although their client lived in Marlborough, he regularly attended a Pain Clinic at Burwood Hospital in Christchurch and so it was agreed that I would meet their client in my offices when he next came to Christchurch.

26. When I met with the individual (who I shall now refer to as Client 3) he described his current and significant physical symptoms. These included severe muscle cramps and spasms which caused him extreme pain. He told me that his symptoms were becoming worse with time and he believed they were long-lasting effects of the ECT and

paraldehyde injections he had received while at Lake Alice hospital in the 1970s. Client 3 informed me that his specialist supported the view that his problems were likely attributable to administration of the ECT and paraldehyde at Lake Alice. Client 3 wanted advice regarding possible compensatory options.

27. After hearing the very concerning description of the circumstances in which Client 3 had received ECT and paraldehyde, I agreed to consider whether I could assist him. I informed him I would carry out some preliminary investigations following which I would contact him a fortnight later, to confirm whether I was able to accept his instructions to act.

28. Within a week of that meeting, I received a telephone call from a lawyer based in Wellington (Lawyer A). He said he was calling me because he was aware of my experience in dealing with group or class actions and wanted to know if I could assist with an issue that affected one of his clients (Client 4).

29. It soon transpired that Lawyer A's client had been a state ward at Lake Alice during the early 1970's. Lawyer A's client's experience was very similar to that of the client referred to me from Blenheim. Given these similarities Lawyer A and I became concerned that there may be many other former Lake Alice residents who might have been similarly treated and affected.

30. Lawyer A explained to me he was a sole practitioner who specialised in other areas of the law and that he wanted to know if we could cooperate with a view to jointly investigating the facts and exploring any potential remedial options. We quickly reached agreement on maintaining a joint approach to the issues.

31. We commenced with general investigative work, and soon engaged a private investigator to try and locate some of the former residents of Lake Alice during the relevant period. It soon became apparent from the individuals located by the investigator that there were many former Lake Alice residents who had almost identical complaints.

32. We became aware that another individual, represented by an Auckland Law Firm, had already filed proceedings against Dr Leeks & the Attorney General, making allegations of a similar nature to those emerging from our investigations.

33. This soon led to discussions with Counsel, following which we opened dialogue with David Clarke (Solicitor at the Ministry of Health) on or about 29 February 1997.

34. Sometime in early 1997, Lawyer A and I discussed media options. We felt media coverage would help raise awareness among that pool of former Unit residents, who had been similarly treated and effected. This led to Lawyer A speaking on the Kim Hill Show and speaking about some of our client experiences and the picture that seemed to be emerging.

35. Also, I contacted TVNZ and TV3 News and on 2 June 1997, the Dominion Post newspaper did an in-depth article about Lake Alice, tracing events through the 1977 Commission of Inquiry.

36. By 4 June 1997, we had been approached by a total of 32 individuals (all independently of each other) who wished to speak of their experiences at Lake Alice during the early to mid-1970's. It was clear to me that the great majority of those coming forward had

no opportunity to confer with others before doing so, however the consistency between their respective stories was striking.

37. We were then approached by the producers of the 20/20 current affairs program advising they were interested in running a documentary. They wanted to see if some of our clients would discuss their experiences with them and such was soon arranged.

38. In June 1997, Lawyer A informed me that he was going to close his practice and take up an in-house corporate position. It was agreed that I would continue with the full conduct of the case, from the point where he took up his new position.

39. On 3 July 1997 we wrote formally to the Attorney-General laying out the background to events including details of discussions concerning Lake Alice in Parliament, the Royal Commission of Inquiry, the Ombudsman Complaint and the Police Complaint (1976 – 1978). We advised of the 20/20 documentary which was shortly going to air and raised concerns that none of the agencies involved, including the DSW and the Department of Education (through the Special Education Service), carried out proper investigations into the complaints back in the 1970's. We suggested at this stage the matter of compensation should be put to one side and suggested that a further Inquiry should be commissioned.

40. On 6 July 1997, 20/20 presented a 40-minute television exposé of the events at the Unit. This focused on the experiences of four people (Clients 5, 6 & 7 and Anonymous) who gave first-hand descriptions of their experiences of the application of ECT and paraldehyde injections. This program caused wider media commentary and was

influential in us later being able to secure a meeting with the then-Minister of Health, Bill English. I also contacted TVNZ and TV3 News.

41. On 7 July 1997, Bill English then spoke on the Kim Hill Show. He said: *"...I was horrified, like anyone else...these people were about my age...so when I was getting on the school bus and having a healthy, secure childhood, these people were being terrorised and I've found it all very moving...I have no reason to disbelieve them...there was a much higher level of acceptance that whatever was going on in these places was acceptable...what was going on there was invisible... the issue of recompense is a whole issue of liabilities...my instinctive reaction is that the state ought to recognise that things happened and not sort of hide behind a whole lot of legalisms, although in the end, we will have to deal with the legal issues...in my capacity as a Minister of Health and as an agent of the state, I suppose, we have to recognise that these were state-run institutions, that if these things happened in a domestic environment, they would certainly be litigated.....you'll find a feature of this and other places like it is no accountability...what I am in a position to make some judgement about is, whether or not the state exercised its responsibility to treat its own citizens with dignity and respect, and my guess here, my view here, is that it didn't and I think it often failed to do it in a number of these institutions".*

42. I heard nothing back from the Ministry of Health in response to our correspondence (3 July 1997) for a few weeks, so I wrote to Bill English (Minister of Health) on 21 July 1997. I advised Mr English that to date I had refrained from making any media comment but understood that a statement from the Ministry was imminent. We

considered it appropriate that we meet with Mr English to discuss what their response might be.

43. Bill English replied to me on 29 July 1997 stating: "*the issues raised in your letter, and in the material, I have received from [Lawyer A] are serious and I agree that consideration needs to be given to the most appropriate way in which to address these matters. I am presently considering a range of options and invite you and [Lawyer W] to have a confidential without prejudice discussion with me before deciding on an appropriate course of action. A member of my staff will be in touch within the next few days*". I discuss in more detail later the meeting that followed with Minister English.

44. Over the course of the next few months, we made several approaches to the Ministry of Health both by telephone and correspondence, which provided them with a comprehensive picture as to the nature and scope of our clients' allegations, and with suggestions as to how the matter might be practically resolved. In summary, we suggested that an Inquiry should take place (and offered our thoughts as to what the nature and parameters of the Inquiry should be) and indicated that, taking into account the nature of the allegations, we considered a non-court resolution process was appropriate.

45. From this point, many more individuals continued to approach us and by August 1997, we had spoken with approximately 80 former residents of Lake Alice during the relevant time.

46. By mid-September 1997, Lawyer A's involvement ended and my firm maintained the case thereafter.

47. At this point I was waiting to see how the Ministry would respond to our initial approaches and suggestions. I was mindful of the fact that if our suggestions were not adopted, I would need to assess what options might exist to persuade the government of the day to seriously consider group member claims, and to discuss how they might be resolved without the need for formal court action.

How I vetted prospective clients

48. Given the media involvement and the events having occurred such a long time ago, from the outset, I perceived some risk of persons who never actually resided at Lake Alice, potentially coming forward to join a prospective class action, in the hope that they might receive some fiscal recovery.

49. Lawyer A and I discussed from very early on how we would manage that risk. Necessarily, we developed a form of filter that ensured early detection of any false claims. From the outset, I decided we should maintain the following approach.

    a. As the Unit had closed in 1977, we reasonably expected former residents would now have little contact with each other. Therefore, prospective clients and existing clients would only have contact with me or my staff i.e. the firm would not permit the details of any other class member to be relayed to any other. We decided never to mention the names of either former residents or staff members at Lake Alice to any of the individuals who approached us.

    b. We invited prospective clients for full initial interviews but prior to those interviews they would not be given any forewarning of the questions they were likely to face. I

considered this was key in eliminating the risk of individuals being able to approach us and develop false claims.

c. It was expected that at interview, genuine residents of the Unit would remember facts unique to the Unit and of the following kind:

a. the number of dormitories located on the site, and their geographic orientation;

b. the number of floors in each dormitory;

c. where the bathrooms, toilet blocks, classrooms, entries and exits were respectively located;

d. the number of staff and their names, ages, physical descriptions, quirks and peculiarities;

e. a full description of Dr Leeks, the car he drove, its colour, what damage it had and where such damage was located;

f. what the ECT machine looked like, the room in which the ECT was administered, which staff were in attendance etc;

g. the specific details in relation to the application of ECT;

h. the side effects of paraldehyde injection.

50. Such questions were often entirely unrelated to the legal issues, but they were extremely effective in quickly establishing whether an individual had resided at the Unit. All of my staff members interviewing prospective clients were trained in this approach.

51. In most cases, we could be sure there was no cross communication with other prospective class members, and we remained confident in our ability to assess whether a claim was genuine.

52. In many cases, we recovered, medical records to further corroborate not only an individual's residence at the Unit but their recollection of events.

53. There were only about 6 individuals (of over 100) who were aware of where another class member lived or knew how to contact them. Those individuals were given our particular attention and were directed not to have any communication about the Lake Alice affair with each other. We continued to monitor the situation and no issues arose from that group, we had identified.

54. I recall there was one individual who approached my firm claiming to have been resident at the Unit, but by asking the filtering questions we quickly became concerned that he was not a genuine claimant. In discussing our concerns with him, he soon confessed that his complaint wasn't genuine.

How the litigation was funded

55. From the outset it was plain that most class members were not in a financial position to fund legal costs in any meaningful manner.

56. Given the long period of time between the events and any prospective legal claim, I considered it was highly unlikely any legal aid committee would advance funding. In my experience, class actions of this nature must be managed in a particular way and at that early stage, I would not contemplate attempting to deal with a legal aid committee on such a case. It was my expectation that the ultimate form of resolution would be through reaching a political agreement with the government. That would require a sustained and focused, media and lobbying campaign, funding for which fell well outside the scope of

normal legal aid committee consideration. Overall, I did not consider the case would be manageable on a legal aid basis.

57. Therefore, it appeared to me that there was no alternative other than for me to underwrite the action. This meant that a quasi-contingency fee arrangement had to be established. It is to be remembered that in 1996, there were no effective litigation funding options (and so access to justice was entirely dependent upon plaintiffs making their own financial arrangements for legal services). Nor was there any realistic opportunity to utilise 'set-aside' orders, or 'common fund' orders, the tools necessary to enable serious consideration of a genuine class action today.

58. At that early stage and given the nature and facts of the case, which suggested non-medical and punitive use of ECT and paraldehyde, I anticipated the Crown may agree to some form of independent inquiry. If the parties cooperated then the Crown might fund our reasonable costs, at least during a fact-finding phase. I decided I should seek a Crown contribution to costs.

59. Having already provided the Crown with the detailed nature of the allegations and suggestions as to how the matter might be addressed, I thought it appropriate to begin making requests that the Crown contribute to my clients' costs, as early as in August 1997. By letter to the Ministry of Health on 11 August 1997 I made a detailed request for Crown funding. This request stated which lawyers I would allocate to work arising from an agreed ADR process and I detailed fully the anticipated work, including: *"completing detailed statements, identifying corroborative evidence, pursuing and adducing corroborative evidence, identifying issues of relevance to an Inquiry, assisting*

in the containment of issues and ensuring a conciliatory and cooperative approach". I made it clear that I was well versed in conducting and managing group cases of this nature and I alerted the Ministry to the fact that the dispute resolution process I was proposing, was closely modelled on the process the Crown entered into with my firm, in resolving the civil claims arising from the Cave Creek case.

60. I elaborated on and reiterated my request for Crown funding, on at least, the following occasions:

a. during a meeting with David Clarke (Solicitor at the Ministry of Health), Grant Liddell (Solicitor at Crown Law Office) and representatives of the Department of Social Welfare and the Department of Education, which took place in Wellington on 5 September 1997.

b. in correspondence to the Ministry of Health dated 15 September 1997;

c. in correspondence to the Ministry of Health dated 1 October 1997.

d. during a discussion with Ron Patterson, David Clarke and Catherine Coates of the Ministry of Health on 23 November 1997.

e. during a further discussion with Ron Patterson, David Clarke and Catherine Coates of the Ministry of Health on 24 January 1998.

f. in correspondence to the Ministry of Health dated 9 April 1998.

g. during a further meeting with David Clarke 3 June 1998.

h. during a further meeting with David Clarke and Grant Liddell on 8 October 1998.

i. in correspondence to Crown Law Office dated 9 October 1998.

j. in correspondence to Crown Law Office dated 26 November 1998.

k. in a discussion with Grant Liddell on 2 December 1998.

l. in correspondence to Crown Law Office dated 4 December 1998.

m. in correspondence to Crown Law Office dated 14 December 1998.

61. Although I was persistent in my attempts to secure Crown funding for my clients, ultimately this was to no avail.

Terms of Engagement

62. It was always clear that in the event my requests to the Crown for funding support were declined I would have to provide terms in my solicitor/client fee arrangement that would fairly offset the significant financial risks I would assume in embarking on such a project. Those risks included:

- The risk of not being paid at all for the significant work my firm had already completed, and was still to undertake.
- The risk of not covering costs should the fee cap in the solicitor/client agreement operate to limit the firm's recovery despite actual WIP being at a much higher level than the sum contractually recoverable.
- The risk of not recovering client contributions to the disbursements being met on the group's behalf by my firm
- The risk of incurring total disbursements in excess of the cap on client contributions to disbursements.
- The risk of being liable for adverse costs, should the case fail at trial.

63. The proceedings carried clear risk in those areas and given the time which had lapsed since the Unit was operating, there was real potential that the Crown might raise

limitation defences. Such risks were much higher than in conventional litigation and despite significant attempts by me to ascertain the Crown's position on limitation and liability, no definitive response was ever received from them in regard to either matter, whether during the pre-action correspondence or after proceedings were filed.

64. During the course of the action two solicitor/client agreements were successively offered to clients.

65. The first solicitor/client fee agreement was presented to clients in August 1997 and provided:

a. GCA was instructed 'to obtain a negotiated financial settlement with the Crown'.

b. clients were to pay $100 (non-refundable) to GCA as a contribution towards anticipated costs and disbursements.

c. if no settlement was reached with the Crown or should GCA terminate the agreement, no additional fee would be payable by the clients other than the $100 contribution.

d. if a successful settlement and financial recovery was obtained, GCA was entitled to a "fair and reasonable fee", to be calculated:

- if the Crown funded 'the inquiry stage', as 25% of the sum recovered for the client plus GST and disbursements; or
- if the Crown did not fund the inquiry stage, a fee of 35% of the sum recovered for the client, plus GST and disbursements.

e. the contracts expressly limited the instructions to obtaining a 'negotiated financial settlement with the Crown' and expressly excluded litigation.

f. clients were advised and encouraged to seek independent advice about the nature and significance of the agreement.

66. The initial agreement was that client payment of fees was wholly contingent on success and:

a. fees would be calculated in accordance with the New Zealand Law Society Rules and "Principles of Charging";

b. on success, an uplift over hourly rates would apply;

c. the success premium would be 25% if the matter was resolved, other than through litigation, but it would be 35% if resolution was achieved post or through litigation.

67. In the event, no reliance was placed on the first agreement because the Crown finally rejected entering into any alternative dispute resolution (**ADR**) process. Therefore, a fresh agreement had to be presented to clients, catering for the fact that litigation was now required.

68. The second solicitor/client fee agreement was presented to clients on 12 March 1999 and provided:

a. the earlier agreement was to end.

b. GCA was instructed 'to obtain a negotiated financial settlement with the Crown', or 'pursue the matter through a litigation process'.

c. clients were to pay an additional $300 (non-refundable) to GCA as a contribution towards anticipated disbursements (not costs), and there was provision for a further contribution of $200 towards disbursements if required and if later called upon.

d. significantly, any disbursements incurred over and above the $500 contributed by the clients would be met by the firm and would not be deducted from any settlement monies later received.

e. the client's obligation to pay fees was changed to 'a figure *not exceeding* 40% of monies recovered on the client's behalf inclusive of GST'. Note there were to be no further deductions on top of that sum in respect of disbursements.

f. if no settlement or financial recovery was achieved, no fee would be payable by the clients over and above the contributions already made.

g. once again, clients were advised and encouraged, to seek independent advice about the nature and significance of the agreement.

69. GCA carried virtually the full risk of non-payment in the event there was no financial recovery. Not only did my firm limit the monies which could be recovered from my clients for disbursements, the firm also committed to a self-imposed cap on the total fees chargeable so fees could never exceed the stated percentage of the ultimate recovery. By this means, all clients were guaranteed to recover a substantial proportion of any recoveries, without any risk to them, regardless of how much work was ultimately completed by GCA. This was a particularly important client protection in the event relatively low compensation was ultimately recovered. In those circumstances, the firm anticipated overall losses.

70. The fee agreements provided authority for me to enter some form of resolution process with the Crown or to seek a negotiated settlement. At that stage I anticipated a resolution process would fall into two broad phases:

a. an Inquiry whereby relevant evidence would be gathered and then be placed before an independent person. That party would then determine the true nature and scope of the events in the Unit.

b. resolution of claims by way of compensation payments would follow, as might be required. It was anticipated quantum might be resolved by direct negotiation between my firm and the Crown, or otherwise an independent party would determine individual compensation.

71. As the case developed the financial risks for myself and the firm grew substantially. I discuss this later in this brief in relation to a fee complaint lodged by one client after the case was successfully settled. However, at this point I note that:

a. During the course of the Part I process, I incurred significant business and personal debt, all of which was secured against my family home. Later in the process it became necessary for me to sell a family trust asset to fund the firm's position.

b. By the time the Part I claimants' claims had been finalised in September 2001:

- my firm's unrecovered work in progress (WIP) for this case was approx. $1.55M. This figure does not include the time spent by my staff distributing the settlement monies and dealing with the significant number of queries from both clients and the media in relation to the settlement reached.
- approximately 40% of my clients had made no contribution to the disbursements whatsoever. Of those who were able to make

contributions, the payments came piecemeal and often by way of relatively low instalments e.g.,$20 at a time.

c. By October 2001 and at the conclusion of Part I, my total outlay on disbursements was a little over $152,000. The solicitor / client agreement provided that in total, I could not recoup more than $54,100. Therefore, my firm (and not my clients) funded the remaining disbursements in the region of $97,900 and so this remained an irrecoverable sum.

What we were presented with

72. To illustrate the picture emerging from an early stage, I set out the following client commentary. These extracts are taken from their comments on a 20/20 television program which aired on 6 July 1997.

Client 5 (on ECT)

"The doctor would be talking "you haven't learnt [name], you just haven't learnt" and he starts turning the dial. It's like having two Black and Decker drills on either side of your head… and then this pain, your body…your eyes are just clenched tight, tears are rolling down your eyes. I just can't understand why I could see this light going through my eyes… I just had a horrible squabble that I had with some of the other boys for name calling and I was approached by one of the nurses there who came up to me and looked down at me and placed both hands upon my temples and started rubbing them like that…he said "you'll be seeing the doctor on Saturday".

…I think back to those times, and it was a nightmare… there was a part of me that was taken away, it remains there. … I remember one time… I accidentally knocked one of

the other boys on his back and I was told by the nurse I would be seeing the doctor on Saturday.

Dr Selwyn Leeks, he was my psychiatrist… the only day he ever came to see us was on punishment day, Saturday at 1 o'clock".

Client 5 (on paraldehyde)

"It's like you've got a cramp… it's uncontrollable … just spasms everywhere….like you're knotted up…painful. And the pain lasts for hours. No-one wants to come by you because you stink of it. Every time you exhale it comes out of your body, out of your breath. If you perspire it comes out of the pores in your skin".

Client 5 (on Lake Alice generally)

"… there's so many years gone by… I could have made a life for myself… maybe if they didn't do this to me as a child. Money could never help. They were teenage kids there sitting in the hospital… How can people like that get away with it?"

Client 6 (on Lake Alice generally)

"You wake up at night with nightmares. I still do. And the nightmares just all stem just from their treatment. You relive what happened on that table. It just keeps coming back and coming back. I wake up at nights. I can be saturated lying in my bed, I'm actually sitting up in my bed I'm screaming. Nothing's coming out but I'm screaming."

"Please don't let it be me. You can only take so much pain and that was what it was. Something that, even thinking about it now, it hurts. Back then it hurt a hell of a lot more. You felt the guys' fear, you could feel the fear all around you "

"I fought them every step of the way. From the time they called my name out and pointed to me and beckoned me, I said no... and you fought from there to the time you got back off the table, if you were capable of getting off the table."

"My first experience on the table was, there's no pain, it won't hurt, open your mouth and put this in your mouth, it was just a mouthguard. And you lying there and wondering "why the hell are they all covered in rubber? Why have they got rubber gloves on, rubber boots?"

"Generally, there was four staff members, and the doctor. The staff members were basically to hold us down and the doctor was the one that did all the controlling of the power unit, whatever you want to call it. Dr Leeks. I believe his first name is Selwyn, I'm not sure. It's a name I'll never forget. I'll probably carry it with me until I go to the grave ...it's not one I'm likely to forget easily".

"I know what was happening to me was wrong. But I couldn't do anything about it. I was a twelve-year-old in a big man's world. You were a bad boy. Take your punishment and like it. You know, take your punishment like you deserve it. You can't run, you can't get away from them. You run...you get brought back and you're in for it twice as bad".

"The twelve-year-old mischievous boy that I was when I went in there... I came out a man wanting to be a criminal and that's what it did to me. No matter how much I tried, my family tried, anyone tried, I was rebelling against them. After that I started rebelling against anything to do with authority. And I did right up until 10 or 11 years ago."

"I never spoke to [Dr Leeks] as a patient or anything like that. I only ever saw him walk through the front door of the villa, in through the office, up the stairs and when I went upstairs for treatment, what they called treatment. He never spoke to me".

Client 7 (on ECT)

"If you were smoking... you got zapped".

"The nervousness started at half past, and the shaking. Sitting on the chair and just shaking. At about quarter to two some of us would urinate, some of us would shit our pants and I'm not saying all of us, I just happened to be one of those ones who did that. By two o'clock you could see his van coming up the street so normally some of us went onto the floor... I call it the foetal position. I'd just roll myself up into a ball, tried to hide ...it was terrible. It is terrible."

"The room's all set, electrodes are all soaking in the sulphur, you can smell it, you know. You know your turn is going to come around but no-one, I

never saw anyone walk up the stairs to the room. It was procedure to go onto the deck...I never saw no-one walk, no way."

Client 7 (on first meeting Dr Leeks)

"I thought [Dr Leeks] was a nice man. I thought, because he was well spoken, well mannered, well dressed. He came across as a gentle man. I shook his hand when I first met him, and it was so soft. I won't forget that. I'll never forget the look on his face.... He gave you that sense that you could trust him."

"To have this person lean over you while he was administrating ECT and look at your face. To look at him he had no... and not register any feeling, no emotions, it was a kind look.

He never had a big flame in his eyes. It was a look of… there was no expression. It was just a look. And to lie there and scream and yell and look at him. I'll never forget his face. I'll never, forget what sort of van he drove. I'll never forget that soft touch and I'll never forget what I saw while he was giving the ECT and what he was saying, because he never rose his voice. He said "I'm taking the electrodes down the side of your face, now I'm going down to your jaw, you should feel quite excruciating pain"… He was, he was, well you just can't describe what I think of him now."

"I know of one instance where he electrocuted someone on the penis... because he was caught masturbating under the covers of his blanket at night and he was humiliated in front of us, they especially called in Dr Leeks to give him ECT. His scream was, you'll never hear it, I'll never hear another one, and I've heard screams in my life quite a bit. ...It's a chilling one I can tell you now. Especially when you think it's to a twelve-year-old child".

Client 7 (on Lake Alice generally)

"We had one particular staff member that liked to come in with the electrodes and a bowl, a silver bowl and they used to soak them in Sulphur. It was the smell. He'd go round the room and say "You today? Is it you today?"… I just believed at the time that he just loved it, he likes scaring boys and girls, because there were girls there too".

"I escaped and we complained to the Police when we were actually arrested by the Police. We ran out of gas… the Police came and we told them that we were going back to Holdsworth to give ourselves up because we couldn't handle ECT and Lake Alice. But we were just considered escaped mental patients, we were in hysterics. They took us straight back... we got ECT. He kept us going for a while before he knocked us out. There's a button

on the machine ...to get the current up and he told me, he said to me "Not long to go now [name] - we'll just push a button and it will be all over" …and I came too, the next day in another ward… I was knocked clean out."

"There used to be female kids and staff, cooks and some of us hooked on to them, we used to call them mum, because they cooked our meals, I suppose it was a mother figure to us. Some of them broke down in hysterics, some of them quit the job because of what was happening, because of the screaming, that was something they could not handle."

"I consider what [Dr Leeks] did to me has made my life worse. So, where he gets off on thinking that he thought what he was doing was right and it was treatment, I don't believe that for one minute. He never put us to sleep. So, I don't believe for one minute because he thought it was good and it might make us better or else, he would have put us to sleep".

"I'm held accountable for my actions, if my actions are unlawful, I'll go to jail and I expect the same for them. They had a major part of my life and when you can't forget things like that and you have led a life of crime and you always have to go to court and made to be held responsible for your actions and you go to jail... I want justice, peace of mind…because for me this is a healing process".

Patient "James", Anonymous (on Paraldehyde)

"It was given to us as an intra-muscular injection used to punish things like smoking. It was basically just like, they used Paraldehyde like teachers would use a ruler.... It was extremely painful. It caused a muscle spasm in the muscle it was injected into. They would give small doses into the upper arm and large doses into your buttocks or your

thighs and for hours afterwards ...you weren't able to move your arm or if it was your backside, you couldn't sit or walk".

Patient "James" Anonymous (on fear)

"The place was enveloped in it. You spent your entire day constantly trying to keep out of their clutches".

Patient "James" (on Lake Alice generally)

"There was a boy there who had been a bully and he had been involved with homosexual assaults on other kids. He also had some sort of relationship with one of the staff members and with that he was able to keep... protected him to a degree, and this staff member disappeared, he just went off the unit. And it was round up time for this guy and he was taken upstairs, it was after the evening meal one night, he was taken upstairs, Selwyn Leeks was there and a couple of nurses who I can't recall and the ECT machine, and one by one he was stripped down to a pair of underpants, and one by one we were brought up there, all those of us who had been bullied by him, and the electrodes were applied to his arms and legs and we operated the machine. We were taken up there one by one, filed up there and just invited to give this guy a good zap, which we did… [Dr Leeks] was there, he was supervising the thing. The nurses were there. They actually applied the electrodes to this guy's limbs, and the machine ...I remember it was on quite a long extension lead from the machine to the electrodes, probably about a couple of metres away, and you just knelt down by the machine and twiddled the dial and listened to this guy scream and beg us not to do it. I just cannot believe that we did that or we were allowed to do it. I can't believe that they were allowed to run the place like that. It's just horrific... I really don't

know what to say because it was normal life for us there. There was no therapeutic angle to it whatsoever. It was just physical abuse, pure and simple."

"I mentioned it to my father who was concerned enough to actually complain and that just earned me a session on the machine for having complained. They told my father that I was delusional and that I was making it up; that what I was getting was legitimate therapy and I was distorting it".

"You could understand that sort of thing if it had happened in the 20's or the 1870's you could understand it, but in the 1970's, there is no justification for it. You can't say, "oh well we were dumb then, we didn't know. Gosh we thought that if you hooked some little kid up to the National Grid every Saturday afternoon for the next few years you could actually make a man of him. Well, we really thought that". There's no way you can say that. Anyone that tries to use that as a defence or a justification is just not there. It's indefensible."

"They were just out of control people having their way. But where was the accountability of the system, where were all the bureaucrats, where was the medical association and where the hell were all these people who were supposed to be making sure that these places ran properly? They pumped scores of kids through that place over the years. The system has to be punished. All the rest of these little tin gods and petty hiders out there have to be made to understand that if they do things like that they will be punished and that's what I'd like to see happen".

73. Other allegations were made by former patients included, but were not limited to:

- physical and sexual abuse, such as being hit with a tennis racket,

- being locked in a cage alone with a "deranged adult",
- being made to eat vomit,
- threats of being thrown off a balcony,
- abuse of disabled children,
- waking up from anesthetic whilst being raped,
- other acts of rape and sodomy by staff and adult patients at the Hospital and,
- coercion into performing sexual acts on staff.

74. Following the first batch of client interviews it was clear that we were facing a very serious issue because:

a. all complainants were children when resident at the Unit;

b. all came from difficult family circumstances and many had behavioural or other problems;

c. all could be said to be 'vulnerable persons';

d. the state and its agencies were in a fiduciary relationship with these persons;

e. all complained of serious breaches of duty, the most egregious being apparently unlawful injections of paraldehyde and unlawful applications of electroconvulsive therapy, and sexual abuse;

f. to the best of our knowledge, none had been committed to Lake Alice under the mental health legislation of the time;

g. there was virtually no opportunity for complainants to conspire or develop false accusations;

h. as a matter of common sense there was virtually no possibility of individuals presenting near identical stories, in isolation from each other, and more than 20 years after the relevant events;

i. all complained that the primary abuses were intentionally applied as punishments for minor infractions;

j. there was no apparent medical reason for their caregivers to act as they did;

k. in the absence of a genuine medical reason for the application of ECT and/or paraldehyde, there was significant risk that clients had suffered the deliberate application of child torture;

l. prior to media commentary, all complainants responded to my firm's inquiries with remarkably similar statements about what took place and their stories were shocking and often, horrific.

m. all displayed extensive and genuine emotion about their experiences and, despite educational and other limitations, their stories were relayed in a compelling and credible manner.

75. At that point, the overall picture strongly suggested there was good cause to suspect the commission of crimes and very serious breaches of fiduciary duty.

76. Therefore, it was against that background that my firm needed to develop a strategy to try and address these issues.

Early consideration of a Police complaint

77. At an early stage and as part of our strategic review, I considered the possibility of organising client complaints to the Police however, I decided that there would be no utility in doing so at that point in time (1997) because:

a. I served in the New Zealand Police from early 1970 until late 1980 and had a good understanding of how such matters were viewed by the Department during that decade. I anticipated there would be little likelihood of such an inquiry progressing in the timely manner that was necessary in the circumstances, and that Police would point to: the long passage of time since the events at issue, the fact that complainant memories would be imperfect, the difficulty of locating witnesses, the difficulty of locating any corroborative documentation, the difficulty in locating alleged offenders, the improbability of such offenders admitting guilt, and the fact that a Police inquiry had been conducted in 1977 but with no tangible result. In combination, I thought that these matters would probably mean the Police would perceive an inability to meet the threshold required to persuade the Crown Solicitor that the standard of proof required in criminal proceedings would be satisfied at Court.

b. Further, individual clients had complained to the Police at various stages over the years, some directly and others through family or friends. Complaints were made while individuals were still resident at the institution, or soon after. The complaints of which we had been made aware, appear not to have been followed up. Given the way the initial complaints were handled by the police, inevitably, our clients had

lost hope of securing punishment of Dr Leeks, and/or the other staff at the Unit, via the criminal legal system.

c. My clients were more motivated to try and seek monetary compensation whereby such funds could help them put their lives back on track. Naturally, their priority lay with the possibility, that for the first time in 20 years, there might be a tangible remedy that could yet provide some practical utility in their lives.

d. The facts, as we then understood them, did not reasonably suggest that a criminal complaint lodged at that point in time, would lead to an effective outcome for the group. Although the only test of that would have been to submit a complaint and put Police to the test, on balance, it seemed more appropriate to apply our own limited resources to development of a civil action.

e. Depending on what further evidence came to hand there was always the option of making a criminal complaint, at a later date.

78. My firm did make a request to the NZ Police in February 1999 asking that they search for any relevant documents but also circulate a message through all Police Districts informing staff that we wished to speak to any person who had any information about the happenings at the Unit during the relevant period. This was to no avail. We were informed that no documents could be located and also, that no members of the Police came forward to offer any recollection of events at the Unit.

79. For all the reasons stated, I decided not to pursue a criminal complaint at that point in time but reserved the question for review at the end of the civil action.

Our Strategy

80. Any strategy must take into account, client instructions and objectives. As with most cases involving disaster or serious trauma, client objectives were as follows:

a. *Prevention* - For the majority of clients, this was their dominant motivation. They never believed that they would be listened to, or that institutions would take any effective action. However, if there was an opportunity to force some public awareness whereby effective changes might be made then, as was often said, "*nobody else will have to go through what I went through*".

b. *Apology* – a secondary objective is to obtain some form of apology. Clients feel the hurt and distress from their personal experiences and they look to the wrongdoer to now accept their errors and step forward and make a genuine apology. Often, this goes a long way to defusing what is otherwise, a very difficult situation. In this case there seemed to be an ingrained institutional attitude that making any form of apology would be construed as an admission of wrongdoing and that therefore, it would complicate efforts to defend claims.

c. *Punishment* - clients generally then look to wrongdoers being answerable to the law. They are not looking for vengeance, but simply for the law to be applied in an even-handed way. Therefore, even if wrongdoers might be public servants, clients expect the law to be applied just as it would be for any other citizen. If it is applied in that manner, clients largely remain bystanders. However, if it is not fairly applied, or if there is any hint of special treatment or cover-up, this rapidly becomes a major issue for clients.

d. *Compensation* - it is only after the first three objectives have been addressed, that clients turn to consider their own position. In pursuing compensation, clients often perceive this as a way of causing wrongdoers to tangibly address their wrongs. A payment tends to reinforce the genuineness of any apology, it operates as a small element of punishment, and may serve to ensure that institutions move to adopt best practices for the future. In the clients' mind, a compensatory (or ex gratia) payment can reinforce the possibility that genuine reform and future preventive mechanisms, will emerge. However, in a case like this, no monetary award can ever compensate for the suffering actually experienced and so focus remains on the need for a payment, and far less on the question of 'quantum'.

81. Our fundamental objective was to produce enough evidence justifying an approach to the Crown to promote full and final resolution of the Lake Alice affair, through use of a bespoke ADR mechanism that (consistently with what I have outlined above) had as one of its purposes the payment of appropriate financial compensation to claimants. In my experience, legal proceedings involving many people are slow, expensive, unwieldy, and often do not provide appropriate redress for some elements of the class. There are better mechanisms whereby fair and cost-effective resolution might be had.

82. To advance that strategy the firm would utilise three tactical approaches:

a. *ADR or legal proceedings* - factual investigation would be directed at trying to accurately establish the facts, following which a sound legal analysis as to appropriate causes of action could follow. Having formed our opinion as to legal remedies, we would then approach the Crown to openly discuss the matter and see

if an ADR mechanism might be agreed. Only if reasonable approaches seeking ADR were rebuffed, would proceedings actually be filed. It is my strong view, and always my approach, that legal proceedings should always be a matter of last resort. Nevertheless, the actual filing of proceedings should never prevent the parties from continuing negotiations with a view to reaching an agreed resolution, but filing is often required to focus defendants on the issues and to ensure they treat matters seriously.

b. *Media* - careful management of media stories can assist in obtaining defendant focus on the issues. It can also assist in ensuring that critical defendant decision makers will themselves take notice, rather than wholly relying on advice from employees or officials about dealing with the matter through conventional legal channels.

c. *Direct lobbying* - in cases involving government, there are often lobbying options whereby direct and reliable communication can be established with key defendant decision-makers. In appropriate circumstances this can significantly assist in ensuring that there is clear understanding about what the fundamental issues are and what is being sought. For example, if officials have advised Ministers that they are facing some form of 'legal challenge' then it is easy for officials to suggest that the matter be handled in the usual manner through the court. However, if the plaintiff is actually promoting a resolution mechanism that would completely eliminate the need for legal proceedings, then there is serious risk of

miscommunication. In my experience such miscommunication can have profound and unfortunate consequences.

83. In broad terms, my law firm conducted the following work between mid-1996 and eventual resolution of the Part I affair in late 2001:

a. interviewing over 100 former residents of the Unit and drafting statements;

b. devising a cost mechanism by which clients might secure access to Justice (without which a just outcome would not have been possible);

c. attempting to locate around 30 Lake Alice staff and conducting detailed interviews where contact was established;

d. collecting, collating, analysing medical records and other relevant documents;

e. attempting to secure documents from the 1977 Commission of Inquiry, Good Health Wanganui, the Ombudsman, the Police, Ministry of Health, and other government agencies;

f. canvassing and responding to inquiries from many individuals who were either resident at the Unit during another period of time (so not between 1972 and 1978) or who never resident at the Unit, but who had the grievances relating to other institutions;

g. liaising with several experts in the field of psychiatry to develop a full understanding of medical procedures at the centre of the allegations being made;

h. responding to media inquiries and fielding public interest in the case generally;

i. formulating our theory of the case, briefing counsel;

j. preparing and presenting an ADR proposition to Minister Bill English (and later to Wyatt Creech), and to the Ministry of Health and the Crown Law Office;

k. attempting to negotiate an ADR solution;

l. attending to protracted correspondence and discussions with the Ministry of Health and Crown Law Office in a genuine effort to avoid the need to file proceedings;

m. preparing and filing civil proceedings and then attending to all interlocutory matters;

n. organising and managing the logistics required to maintain a class action;

o. communicating with the opposition Health spokesperson, Annette King, and then later liaising with the staff of the Leader of the Opposition, Helen Clark;

p. obtaining Labour Party commitment for the mode of resolution to be revisited should Labour be elected in late 1999;

q. extensive communications with Tony Timms, Prime Minister Helen Clark's executive personal assistant;

r. obtaining agreement in principle with Prime Minister Helen Clark, to settle class claims;

s. addressing Crown obstruction to negotiated settlement processes and to resolving those difficulties;

t. finalising the ADR process and liaising with Sir Rodney Gallen;

u. receiving $6.5 million settlement funds and attending to distributions in accordance with Sir Rodney Gallen's determinations;

Attempts to secure an alternative dispute resolution process with the Crown

84. In the very early stages, we spent a great deal of time speaking with individuals who came forward following initial media stories. As I have discussed it was extremely important that we handled this stage very carefully to ensure we were gaining an accurate picture of the facts in order to put those to the Crown. Clarity about the facts would best assist the Crown in considering what the most appropriate process might be for confronting the allegations.

85. With a clear understanding of the facts I spent time determining, with John Billington QC, what causes of action might arise.

86. Given the nature of the allegations and our expectation that the Crown might initially look to whether ECT was deemed an appropriate method of treatment, we had to determine whether the application of ECT and/or paraldehyde could be validly viewed as some form of legitimate medical "treatment". At that point I was of the preliminary view that none of the key complaints could be legitimate treatment but we needed to make sure, and to that end sought the preliminary views of some appropriate medical experts. One of those experts which I approached was a New Zealander, Dr Steven Baldwin, Psychologist and then-Professor at Teeside University in the UK. He was internationally recognised as an expert on the misuse of ECT, and he was immediately very interested in the Lake Alice case. My recollection of that discussion is that he very quickly informed me that ECT should never be administered to children and that there were no circumstances in which this should be the case. As regards Doctor Leeks' explanation to the Commission of Inquiry held in 1977, that he had administered ECT to

the boy concerned because he suffered from epilepsy, I recall Doctor Baldwin was quite adamant in his view that ECT was never a treatment for epilepsy. Following that discussion, I expected, I would later instruct Dr Baldwin to provide expert opinion evidence, (should this have become necessary) but he died in the Selby train crash (England) on 28 February 2001.

87. Following my discussion with Dr Baldwin, I recall speaking with Dr Ding, a Clinical Psychologist, of national renown. My collection was that he agreed with the views of Dr Baldwin.

88. The Minister's letter of 29 July 1997 confirmed that the Minister was keen to discuss how the matter could be most appropriately handled.

89. Following that letter, Lawyer A and I met with Bill English at Parliament on 6 August 1997. There were about 8 officials present including members of the Crown Law Office and Ministry of Health. I documented the discussions which were had at this meeting in my subsequent letter to Mr English on 13 October 1997.

90. In the meeting we set out for Mr English the nature and scope of the information received from our clients. I was at pains to point out that substantial evidence existed indicating that there had been systemic and intentional child torture at the Unit. I recorded that, despite a limited Commission of Inquiry, an Ombudsman's report, and a Police enquiry, all in the late 1970s, no effective action had been taken.

91. We discussed the fact that the opposition Labour MP Jonathan Hunt, had maintained a long-standing campaign to get a full Commission of Inquiry into the events at the Unit but that successive National governments had never agreed to that course of action.

Nevertheless, given the content of the recent 20/20 television program, Mr English said he was "appalled" and that he believed the issues raised by the case should be addressed.

92. I then suggested that consideration be given to using the same determination process which had proven very successful in resolving civil claims following the Cave Creek Commission of Inquiry. I described how I had appeared before the Cave Creek Commission of Inquiry acting for the estates of those killed, the student survivors, and all family members. Following production of the Commissioner's report on the Cave Creek disaster, I briefed Brad Giles QC and we prepared a 'nervous shock' claim against the Crown. Then, before filing proceedings we sought a meeting with the Solicitor General, John McGrath.

93. At that meeting we stated why our clients' civil claims should be resolved. After full discussion John McGrath asked for a short opinion on the legal issues from Mr Giles.

94. Soon afterwards Brad Giles provided the requested opinion to Mr McGrath and after some further communications about the prospective resolution process, we accepted the Solicitor-General's proposal that the case be resolved through a private Determination process.

95. In due course, Sir Duncan McMullin was appointed as determinator and the process proved to be highly successful. It had the advantages of being confidential, quick, efficient, inexpensive, and a binding decision was imposed on the parties. Importantly, Sir Duncan determined fair compensation payments to claimants, thereby removing an otherwise difficult issue for the parties themselves.

96. Given the facts in the Lake Alice matter, I suggested to Bill English that a dispute resolution mechanism based on the Cave Creek model, would be appropriate. It would best ensure attainment of the parties' respective objectives and it would provide a fair, reasonable, and independent outcome. After some discussion he agreed that officials should explore this more fully. The Minister indicated that he wanted to be able to recommend some sort of solution to Cabinet "in about six weeks time" and he asked Crown Law to take the necessary steps to refine the proposition and advise on a solution.

97. We left that meeting believing the Minister was genuinely looking for a suitable resolution mechanism that would not require protracted court proceedings, and that he was motivated to move promptly on the matter.

98. On 9 August 1997 and after further communications with officials, Lawyer A followed up with a letter to David Clark, solicitor at the Ministry of Health. Among other things, he recorded that:

    a. Judge Satyanand would be an acceptable candidate to conduct the inquiry. (By this time the Crown had indicated a preference for an Ombudsman's Inquiry rather than a determination managed by a retired Judge);

    b. terms of reference and reporting time would need to be agreed;

    c. an Ombudsman could address the issues on a full-time basis;

    d. the Ombudsman would be under an obligation to consult with legal representatives of the claimants about the process;

e. legal representatives should be entitled to be present during questioning of experts and clients;

f. legal representatives should be given the opportunity to comment on the draft report before it was published / tabled.

99. Although the precise mechanism had yet to be finalised, at this point we had the impression the Crown was cooperating in working towards a formal inquiry into the events at Lake Alice during the 1970's. It seemed self-evident that if there was any possibility of children being tortured at the Unit through applications of ECT and paraldehyde, the State needed to make urgent and extensive inquiries to establish the facts. We hoped that any agreement about how to properly investigate and establish the facts, would naturally lead to reasonable discussion on how to then resolve individual claims.

100. The *McInroe v Leeks and the Attorney-General* case filed in 1994, dealt with similar facts. At the time we were trying to progress an ADR mechanism for our clients, the Crown had applied to the court seeking an order striking out the McInroe proceeding. The High Court's decision on that application was awaited.

101. The Crown Law Office acted for the Attorney-General on the McInroe strike-out application and the Crown's rationale for seeking a strike-out, was that:

a. the plaintiff's claim was statute barred pursuant section 4 of the Limitation Act 1950;

b. certain parts of the causes of action were barred by section 14 of the Accident Rehabilitation and Compensation Insurance Act 1992;

c. the plaintiff's claim was barred by the Mental Health Act 1996 (following the Judgment of *Attorney-General v* GRO-B delivered on 20 December 1994 and officially reported in 1995 1 NZLR 558).

102. The Crown's application was determined by Master Thomson on 2 August 1996 in the High Court at Whanganui. He declined to strike-out the claims. We were then hopeful that this might persuade the Crown to properly consider our proposed non-court resolution options for the Lake Alice claimants.

103. On 11 August 1997, we wrote to the Ministry of Health and reiterated our proposals. At the same time, we continued our efforts to secure documents.

104. On 18 August 1997 I wrote to our clients, reminding them that litigation *"is the final step and in my view, always one of last resort."* In the belief that the Crown was seriously considering our proposals, I also wrote *"adversarial tactics have been adopted by the Crown in the past but I am pleased to say that given the Cave Creek experience, there are no present indications that such tactics might be used by the Crown in this case. To the contrary, there is every sign that they intend avoiding such a position as they no doubt recognise the very strong potential, given the particular facts of this case, for such a stance to attract very negative media commentary".*

105. Then, having given consideration to Master Thompson's decision not to strike out the McInroe proceedings, on 25 August 1997, I wrote to the Ministry of Health seeking a waiver on the limitation matter. My intention being to establish some certainty for my clients and also to determine the Crown's intentions on this point. That letter recorded that we had a preliminary discussion with Dr Robert Chambers QC, Counsel on the

McInroe case, who had indicated that he and his clients were prepared to join in any resolution process that might be agreed between my group of clients and the Ministry of Health.

106. Also, I expanded on my former proposals for a resolution process. That proposal comprised a three-stage process:

    a. an inquiry stage (fact finding);

    b. an assessment of liability stage; and

    c. a damages stage (determination of compensation.

107. A teleconference was then held with Ron Paterson from the Ministry of Health on 28 August 1997, during which we discussed aspects of the plan and the fact that Cabinet would make the final decision on whether to sign off on the proposal.

108. A further meeting was held in Wellington on Friday, 5 September 1997, attended by myself, Lawyer A, David Clarke and another member of the Ministry of Health, Grant Liddell and another member of Crown Law, a representative of the DSW and a staff member from the Ministry of Education.

109. Much of the meeting focused on a process for the Crown to disclose documents and materials pertaining to the events at Lake Alice, including medical records. It then became apparent to me the Crown was not focusing on the possibility of a definitive resolution process but instead, it was citing a range of legal constraints in terms of seeking and sharing information.

110. On 15 September 1997, I again wrote to Ron Paterson and David Clarke at the Ministry of Health seeking Crown contribution to our clients' costs. Given the nature of the case

and the abundance of corroborative evidence already available at that early stage, I thought it a reasonable suggestion that the Crown assisted in funding at least the early fact-finding stage. My proposal was detailed, transparent, and included a specific costing proposal for consideration.

111. The letter also noted, contrary to initial correspondence, recent discussions had revealed that the Crown may now have some difficulty committing to overall resolution and a damages compensation component of the process. I raised this because the recent discussions reflected the first significant backward step by the Crown from the general understanding previously reached with the Minister of Health. Although the agreement with the Minister was not binding, the general understanding with him was that there would be genuine efforts made to develop an overall resolution mechanism that should operate outside of the courts. In what seemed to be a turnaround, the Crown was now intimating that its preference was only to commit to an inquiry, without any commitment to overall resolution or any compensatory process.

112. I heard nothing back so on 1 October 1997, I again wrote to the Ministry of Health. I reiterated my concerns and sought some certainty as to the expected time frame for receiving a response as to how matters were to progress.

113. On 10 October 1997 we received a without prejudice confidential letter from David Clarke at the Ministry of Health. It confirmed that *"[the Ministry] had prepared a detailed briefing in the form of a draft Cabinet paper for the Minister of Health's consideration*".

114. I then wrote directly to the Minister, Bill English, on 10 October 1997, expressing dissatisfaction with the proposed timeframe for matters to be taken to Cabinet, as this

was contrary to our discussion of 6 August 1997. I considered the process outlined by the Crown meant nothing would occur until the New Year and it was now unclear whether there was any genuine intention to pursue matters in a timely way for my clients.

115. Mr English responded the next day on 14 October 1997 to provide assurances that the Crown was not attempting to defer this issue. He confirmed his intention to find an *"expeditious process"* and stated that *"given other departments [were] involved, he [needed] to liaise with Cabinet"*.

116. I responded to him by letter of 15 October 1997, saying that his letter had gone some way to allaying my concerns and a copy would be sent to my clients. It is fair to say at that stage I relied on the assurances being provided by Mr English.

117. In a letter dated 17 November 1997 David Clarke from the Ministry of Health set out an alternative proposal for the management of information issues. Mr Clarke suggested the Ministry of Health and the Ministry of Education provide a list of files held concerning Lake Alice for the relevant period, from which we would be able to identify files, or a series of files which we might consider to be relevant. The department would then retrieve those files and assess them. The purpose of the review would be to assess the legal issues connected to the information disclosure and to assess practical management implications of my proposal to deal with information. The Department of Social Welfare needed specific individual's authorities to be able to release information. He specifically noted their position as 'not being a rejection' of the earlier proposal set out in Lawyer A's letter of 8 September 1997.

118. In a letter of 18 December 1997, I updated my clients about the position. Although we were still working to secure an appropriate inquiry process with the Minister, given the lack of progress, I confirmed that it was likely we would need to file a Statement of Claim because the Crown was not providing any certainty as to its stance on limitation issues although that had been requested on 25 August 1997.

119. Following a teleconference on 23 November 1997 between myself, Mr Paterson, Catherine Coates and Mr Clarke, Dr Janice Wilson, Director of Mental Health, Chief Advisor (Psychiatric), wrote to me on 28 January 1998. Dr Wilson recorded that during the earlier meeting it was agreed that I would provide:

    a. a full Statement of Claim and supporting affidavits from my clients;

    b. an estimate of the costs I may incur should the Crown agree to the inquiry which I had proposed.

    She now sought that information.

120. On 27 February 1998, I acknowledged that we were in default of her timeframe and that I would attend to the matter but I advised that I did not intend submitting affidavits as this was not the type of case that would proceed on affidavits. As we were contemplating an ADR process, client statements would be provided instead.

121. I sent a costing proposal to Dr Janice Wilson on 9 April 1998.

122. On 27 April 1998 I was informed that one of Philippa Cunningham's cases was going to mediation and that Dr Selwyn Leeks was coming to New Zealand in May to take part. I spoke about this development with Dr Chambers QC and he confirmed that the Crown was merely talking about the possibility of mediation but that nothing had been decided.

123. On 30 April 1998 and in response to my letter to Dr Janice Wilson of 9 April 1998, David Clarke telephoned asking for a meeting however, that meeting did not occur until 3 June 1998. I advised at the meeting that continued delays were unwarranted and there was need to finalise an agreement at that point because there was much confusion as to what the resolution process would comprise.

124. There then followed debate about the resolution options. It was agreed that resolution through court was plainly an option but although it may ultimately prove decisive for claimants, for them it would be slow, carry public exposure, would be traumatic and very costly. The same drawbacks applied to the Crown.

125. We then considered private resolution options. The Crown thought a two-stage process would be appropriate with first, the Ombudsman carrying out an investigation and then second, someone else could arbitrate on the question of any quantum that might then need to be paid to claimants.

126. As we had worked through the options, I came to the view that even a two-stage process involved an element of duplication, and it would be a much longer and more expensive than a process that only required a single stage. Also, the Crown's proposal carried much uncertainty for claimants and they would not see any advantage in embarking on that path.

127. We then proposed a single staged process where a single determinator was appointed and that they would have full control over the process. Investigations could be streamlined and the one party would be able to determine claim quantum more quickly and easily having already been intimately involved with the investigation. The

advantages for the claimants included that it would be certain, quick, involve minimal disruption and trauma (and could even be therapeutic), would have no cost or other detrimental exposure. The advantages for the Crown were the same except for the fact that the Crown would carry the costs however, those costs would be a lot less than having the Ombudsman do an investigation and then have someone else carry out an arbitration on the quantum question.

128. For these reasons we proposed proceeding with a single staged resolution process, or failing that, proceeding in the courts.

129. This discussion provided great insight into Crown thinking at the time because in summary, it was advocating:

- The "need for a factual basis" for claims to be first established. (This indicated that there was no acceptance at that point as to the claimed events having happened, and so a process to 'prove' the facts was being sought).
- There had to be a means by which the Crown could avoid "hangers-on". (Here the Crown was implying that some of the claims would be false and so a mechanism to 'prove' claims was essential).
- The arbitrator (the Crown's term) would need to be empowered to investigate claimants' assertions that they were actually at Lake Alice, and if there was insufficient evidence of this then the claimant would have to call further evidence to prove the same. Further, if they proved they were there, or the parties accepted this in a particular case, then focus must turn to their

allegations. In this regard the Crown wanted them to each give evidence to 'prove' what they allege.

- The Crown wanted the right to call evidence in rebuttal.
- By this means the Arbitrator would make findings of fact on individual claimant's assertions. They would discard any without merit or which did not reach the required threshold of proof i.e. on 'a balance of probabilities'.
- Both parties could make submissions on the merits and on what factual findings needed to be made. The Arbitrator could direct that he is satisfied that the threshold had been reached on a particular case and could only then proceed to consider what compensation, if any, should be paid. (If he was not satisfied the claim would either be rejected or there would need to be further evidence called in support).
- The Crown was firm that nothing could proceed without a proper 'factual basis'.
- The Arbitrator should have inquisitorial powers.

130. It was agreed that following this meeting, we should submit a proposal in writing and the Crown would have two weeks to consider it. There would then either be a further meeting, or a decision would be made by the Crown.

131. During the meeting, the Crown asked for clarification regarding what causes of action were to be pursed and supporting material from our clients that these causes of action were viable. I requested a moratorium on the matter of limitation, and the Crown

indicated this would be considered. I was informed that the Crown were willing to prepare, on a without prejudice basis, some terms for the inquiry.

132. On balance, I left the meeting now sure that the Crown was maintaining a traditional legal defence position and was essentially trying to maintain the key features of a court process within any private process that might be agreed.

133. In a letter of 5 June 1998, David Clarke confirmed that the Crown was prepared to continue negotiations to attempt to design a suitable process for responding to my clients' grievances as an alternative to litigation. It required us to provide the following:

a. a list of our clients and authority to act;

b. a statement of their grievances in terms of the established causes of action;

c. supporting material from our clients which explained how their experiences may fall within such causes of action.

134. However, I was now told that the indication at the earlier meeting, that the Ministry was prepared to draft terms of reference for an inquiry, had been premature. It was now their position that once the materials from my clients had been received, they would be in a better position to draft such terms.

135. In that letter dated 5 June 1997, David Clarke also acknowledged that we had earlier discussed the possibility of a moratorium on time running, for the purposes of limitation. David Clarke indicated the Crown was not opposed in principle to such a moratorium but it would need to consider a specific proposal on its merits before any assurances or undertaking could be given. It was my view that over the course of the meetings and by way of correspondence so far, I had been quite clear what I was seeking in this regard.

Therefore, the Crown had all they needed at that stage to provide a definitive response on the question, but it did not.

136. Over the course of the months leading up to July 1998, my staff and I had been working into the night and during weekends interviewing our clients and preparing witness statements. I would estimate that about 40 to 50 hours was spent on each individual statement. This time was spent reviewing medical records (where these were available), the interview itself (in which we meticulously followed an interview checklist) and the preparation of statements. These went back and forth to clients' numerous times to ensure they were satisfied that the contents reflected their true recollection of events.

137. On 7 July 1998, we provided the Ministry of Health with Volume 1 of client statements (42 signed statements) together with the draft Statement of Claim.

138. We continued working on the statements in the same manner for a further month and on 4 September 1998, we sent the Ministry of Health Volume 2 of the client statements, together with a substantial issues paper, (*The Children of Lake Alice - Issues*). This is attached at **Exhibit GC1"A".** The issues paper outlined the grievances and causes of actions, and set out possible resolution options.

139. On 18 September 1998 David Clarke responded and confirmed the papers provided, "*clearly set out the issues and background from your clients' perspective*". Again, he advised that, as an alternative to High Court litigation, the Crown was not opposed in principle to the adoption of an Ombudsman's inquiry to address concerns, but the Ministry was not in a position to make such a decision within the 2-week timeframe I had requested. He undertook to put the issue to relevant Ministers as soon as practicable.

140. He also invited us to re-state our request for a moratorium on limitation, making it clear that there was not a Ministry commitment to agreeing such a moratorium but that the Crown had a continued commitment to explore options for resolving the issue.

141. I saw this approach as a backward step by the Ministry. Accordingly, I responded to David Clarke on 28 September 1998 (letter attached at **Exhibit GC1"B"**), and set out at length the significant communications and meetings which had occurred, which in my view gave the Ministry more than adequate opportunity to properly work through the implications of what I was suggesting as an alternative to litigation.

142. In my view, at that time, the Ministry had failed to take any steps for 15 months to actively try and progress the claim towards a meaningful resolution pathway. Therefore, I indicated that we would revert to the conventional path (by which I meant litigation) and withdrew all other assurances as to containment of the client group and deferral of the matter from the media.

143. David Clarke responded on 30 September 1998 and expressed concern that I had misinterpreted his letter of 18 September 1998 and had ended the negotiations aimed at exploring options for resolving the issue. His letter set out something of an alternative history and suggested the Ministry could not look at any information until we finally provided client authorities. He highlighted the long period of time it took for GCA to get the information to the Ministry but ignored the fact that the Ministry could have advanced matters on a number of fronts, had it any genuine intention to do so.

144. I wrote to the Ministry of Health on the 1 October 1998 stating that I considered there was little room for the Ministry to argue misinterpretation. Of course, my clients were

compelled to remain open a specific proposal, if the Crown had one, but I advised that without one we needed to pursue the only path that provided my clients with certainty, and the only option now was proceedings. I laid out once again the matters on which the parties needed to reach agreement.

145. I attended a meeting at Crown Law Offices on 1 October **1998** with representatives of the Ministry of Health. It was made clear to me at that meeting that the Ministry wished to pursue a proposal whereby the Cabinet would consider a non-court resolution process but nothing new emerged.

146. On 7 October 1998 I forwarded a Statement of Claim to Wellington agents for filing, while maintaining discussions with the Ministry of Health about whether filing would be finally required.

147. On 8 October 1998, a telephone conference was held with Grant Liddell, David Clarke, myself and two of my associates. At the start of the meeting, Grant Liddell indicated to me that a new proposal was being prepared. I recall him saying that he considered there were some obstacles in getting the Ombudsman process off the ground and this was now going to be harder "*to get Cabinet to sign off*" than it was 12 months ago. He suggested that, rather than proceeding with an Ombudsman process that "*we could see him as being the necessary authoritative fact-finding figure to determine the fact issues*". We discussed a possible "hybrid" approach, that being, firstly, the parties would negotiate directly regarding the facts of each case to see if it was "settleable". I took this to mean a case where liability would not be disputed. From that process, any claims which were not deemed "settleable" would go into a separate pool and perhaps then

following another negotiation/ADR procedure. We went as far as to discuss a management system for the process. We again discussed the matter of a possible moratorium to stop time running on the matter for limitation purposes. My note of that meeting stated "*the parties seemed very comfortable with our general direction*".

148. Following a meeting with my staff after the conference I recorded: "*we saw this as an extremely important development and one that was promising for our clients...we thought there was a genuine prospect of getting a senior QC or similar to sit as an arbitrator/mediator and that we would probably now get access to full official information and could soon work through files*".

149. I wrote to Crown Law Office on 9 October 1998 documenting our discussion and also outlining a proposal for a way forward. It was suggested that the parties could undertake a full review of all available material simultaneously. I provided my thoughts regarding a potential mediation process. Given the progress, that I perceived had been made, I once again made a request that the Crown make a contribution towards client's costs and laid out in detail a proposal regarding the same.

150. On 9 October 1998 and in reliance on what was being discussed with Crown Law Office, I wrote to my clients advising that we were seeking to resolve the matter through a non-litigation mechanism.

151. We spoke with Crown Law Office again on 13 October 1998. Ahead of that meeting and on the same day, we received a letter from Crown Law Office laying out details of how a settlement process or ADR model might be managed. On the matter of my clients'

costs, I was advised they would need to be able to persuade Ministers that an agreement as to costs was in the Crown's interests. They asked me to revert to them regarding this.

152. In response and on 26 November 1998 I wrote to Crown Law Office making further suggestions in relation to a sensible arbitration process and attached a Heads of Agreement providing further details of the proposal in relation to my client's costs. I requested payment in the sum of $250,000 in respect of all past and future payments.

153. I received a letter from Crown Law Office dated 30 November 1998. Among other things which appeared to be taking some of the focus a little off the ADR process, it stated: "*The Crown's present view is that either [party] should have the option to walk out of the alternative dispute resolution process, but not if the case has already been to meditation. It seems to me there is little point in arbitration if the Crown does not accept liability. I think we need to explore the options and the implications more fully than the draft presently does*". The letter was silent on the matter of my proposal in respect of my client's costs.

154. I was immediately concerned regarding Crown Law's comment in relation to the ADR process. It was my view that the process which had been discussed so far to produce outcomes that were consistent with my client's objectives would need to involve fact-finding, discovery, inspection, negotiation, mediation, and arbitration. Crown Law appeared to be proposing an option for the Crown to pull out of the process at any of the first four steps. If my interpretation of what Crown Law was stating was correct, then it was apparent that the parties were fundamentally at odds. I saw an ADR process as encompassing all six phases noted above and the question for the Crown was whether

it wanted to commit to this whole process or whether we wanted to litigate. It was my view that once the parties had elected for the non-litigation route, both were irrevocably bound to go through each step. The whole point of arbitration is to finally resolve the question of "liability" in the event "negotiation" or "mediation" fail. Arbitration will address "facts, "liability and "quantum" to the extent that might be required.

155. We were keen to continue to make attempts to iron out these issues so John Billington QC and I attended the Crown Law Offices again on 1 December 1998. We met there with Grant Liddell and Rebecca Ellis. Again, a potential arbitration process was discussed. I raised my concerns along the lines I that I have laid out above but Crown counsel informed me that Crown Law wished to reserve the Crown's position in this regard, making further comment along the lines of, "*the parties had to show that they had properly explored the ADR options*".

156. During that meeting we sought, without any success, to get the Crown to state its position as to whether liability would be admitted or disputed; whether limitation or ACC bar issues would be raised as affirmative Crown defences; and whether there was any interest in exploring the option of approaching the matter on a "fiscal envelope" basis (i.e. the Crown would face a 'minimum' payment for all successful claimants, but that in exchange for concessions on limitation and other matters, the Crown may also have a 'maximum' exposure, or a cap on the sum of compensation payable in particular cases).

157. Again, I sought a response regarding the issue of my clients' costs. No commitment was given.

158. Therefore, whilst all the main issues had been discussed again, there was no progress in terms of establishing exactly where the Crown stood in relation to each. However, one certainty did emerge in that it was clearly stated that a paper was to be put to Cabinet at its last Cabinet meeting of the year, on 18 December 1998.

159. On 4 December 1998 I received a telephone call from Grant Liddell from Crown Law. He said Crown Law had now received an instruction from David Clarke and said he is "*happy for the complete resolution option to be put to the Ministers*".

160. On 9 December 1998 I again spoke with Grant Liddell who advised that Crown Law had run into some difficulties preparing a paper for Cabinet and the Treasury. The primary difficulty was their anticipation that Cabinet would not entertain an open-ended liability agreement. They now expected the paper to be ready sometime in January. I received a letter from Crown Law Office the same day, confirming what was said.

161. Throughout this time, the firm received significant numbers of inquiries from people who had been in psychiatric hospitals (whether in the Unit or not), letters from lawyers acting for people in similar circumstances, and GCA continued to field a large numbers of media enquiries.

162. I wrote to Crown Law Office on 10 December 1998 pointing out that the potential Crown liability arising from a non-litigation process would not have extended beyond the bounds of what otherwise would be available at court. I explained that my clients had waited years for a definitive decision on which resolution mechanism was going to pertain and they had a legitimate expectation that the Cabinet would determine the issues by the end of the year. Therefore, I did not consider further delay was acceptable, and I

suggested a sensible timetable by which the paper could get put to Cabinet by its last meeting of the year. I suggested that the Crown could provide a response regarding the fiscal envelope proposal, the draft Heads of Agreement and Arbitration Agreement, with any proposed amendments, and provide written advice regarding any other issues, by 14 December 1998. I undertook to reply regarding any issues the following day. I then anticipated there could be a meeting of the minds on 16 December 1998. Then the paper could be put to Cabinet at the last meeting of the year.

163. However, on 11 December 1998, Grant Liddell telephoned my offices and advised there was only a "*sliver of possibility*" that the paper might reach Cabinet on time. He followed up in writing on the same day advising that the Crown now wished to refer the matter to several other government departments and governmental committees, before presenting it to Cabinet. He advised that therefore, the paper had not been submitted by the deadline that day. In my view this was the Crown reverting to its position of October of 1997, which suggested that there would now be further adverse delays.

164. I was by this point very concerned that the Crown was not genuinely committed to a fair and timely process for resolving the significant Lake Alice issues that we had raised with it. The central question we had posed to the Crown was whether it would agree an ADR process with us whereby the events at Lake Alice could be fairly investigated and assessed and, where applicable, claims could move directly into a compensatory stage. Put another way, we sought a single process that would embrace such factual investigation as was reasonably required, and a binding resolution mechanism that would bring about full and final settlement.

165. However, contrary to Minister English's earlier expressed intentions, the Crown was now attempting to reserve for itself, the right to make the relevant investigations, and collect, collate, and analyse the facts as it might think fit. It wanted no time constraints in conducting this process and only after it had completed the same would it then turn to consider whether any form of resolution might be appropriate, outside of court.

166. In overall terms, I perceived the Crown's position to reflect a strategy of delay designed to ensure the claimants would run out of money and/or motivation and simply go away.

167. Therefore, on 12 December 1998 I wrote to Crown Law Office stating: *"with the passage of time, I have developed some serious reservations as to whether the Crown had any interest in the non-litigation route but following your letter dated 6 October 1998, we persisted with discussions…without a signed agreement before Christmas we must simply get on with the court process. Although further discussions can take place, they must be against the backdrop of the conventional interlocutory process …there is nothing more I can do other than await your advice.… 16 months have evolved since this issue was raised with the Minister on 6 August 1997…that is enough time to collate all necessary material, consider all the implications and commit a package with all the relevant information for Cabinet consideration".* I once again asked whether the matter would be put to Cabinet in time.

168. The Crown Law Office responded to me in a letter the same day in which it was stated: *"if you choose to file proceedings, officials and counsel will have little option but to commit resources to meeting the obligations that the High Court Rules impose… would*

be regrettable… for want of a further short period of time for the Crown to consider the ADR option".

169. On 15 December 1998 I wrote again to Crown Law Office advising the Crown that as it had failed to produce a proposal of a definitive nature which could be referred to clients for acceptance, discussions were at an end and litigation would proceed.

170. Crown Law Office responded on 17 December 1998, explaining that officials were exploring the possibility of an inquiry by the Ombudsman, and that they were making efforts to have the matter referred to Cabinet as promised. However, it said that *"in order to obtain approval to pursue any form of ADR process, the Crown required considerably more information about the nature and extent of any potential claims against it".*

171. This letter gave clear insights into the Crown's then thinking. At paragraph 3 it stated that there is *"a considerable difference both in practical and political terms between requesting Cabinet authority to set up an inquisitorial process and requesting authority for embarking upon a process which will be aimed at both fact-finding and finally resolving the matters in dispute between the parties. More particularly, issues about:*

3.1 the actual merits of the respective claims;

3.2 the complete exclusion of litigation as an option;

3.3 any sort of "fiscal envelope" to be applied to the settlement of the claim;

3.4 the possible waiver of certain "technical" defences available to the Crown;

3.5 the payment by the Crown to the plaintiffs of substantial costs in advance.

simply did not arise when the 'Ombudsman Option' was under consideration. Moreover, none of these issues is straightforward and none is without controversy".

172. Crown Law Office went on to say that it was not resiling from anything said in previous correspondence and observed that it did not consider that it any longer appeared to be my intention to seek either his agreement or further co-operation in relation to the matter. The letter indicated that there was still a desire to put a paper to Cabinet in February which would recommend Crown Law Office was given authority to agree to an ADR process.

173. Having said that, the letter went on to say: *"if you pursue the litigation path, it would be the Crown's clear expectation that you would file separate proceedings for each intended plaintiff. Each should be fully particularised. It is suggested, "it is not open" for a representative action to be filed".* I attach a copy of the Crown Law Office's letter dated 17 December 1998 at **Exhibit GC1"C"**.

174. I read this letter as being largely self-serving. It was emphasising the apparent willingness of the Crown to look at resolution options, but was attempting to draw a technical difference between *"an inquisitorial process"* and a process "*aimed both at fact-finding and finally resolving the matters in dispute between the parties".* There had never been a prior Crown attempt to distinguish between processes or to suggest there may be legal and political obstacles attaching to any recommendations that may have to go to Cabinet.

175. As to the expectation that every claimant file separate proceedings, my thoughts were that this would not be the best use of the court's time and resources, or serve clients' objectives, given the nexus between the facts and allegations in each claimant's case. At the time Rule 73(1) of the High Court Rules provided that: *"all persons may be joined*

in the proceeding as a plaintiff, in whom any rights of relief in respect of or arising out of the same transaction, matter, event, instrument, or other document, or other series of the same, or the same statue, regulation, or by-law, is alleged to exist, whether jointly or severally of in the alternative". Clearly the most pragmatic way for all to have approached the proceedings was to bring a class proceeding that all claimants could benefit from.

176. I wrote back to Crown Law Office on 17 December 1998, in one last ditch attempt to ask them to put the paper to Cabinet before their last meeting of the year, the following day. The paper was not put to Cabinet and disappointingly, I had to update my clients regarding the outcome of our efforts. I now had to put it to my clients that inevitably, the next step was going to be litigation and matters would now be on hold until the New Year.

177. Significantly, on or around 22 December 1998 the Hon. Richard Prebble put a question to the Minister of Health: "*Does the Government accept that patients at Lake Alice in the 1970s were unlawfully contained and subject to abuse; if so, when will the Government publicly admit liability and compensate those subjected to unlawful actions?*". The reply from Bill English was: "*... since the matter was first raised in July 1997, I have been concerned to see that the Government take proper action to inquire into and to respond to these complaints. To this end, the Government has been assembling and assessing information related to these claims, and through the Crown Law Office has been discussing with the solicitor for the formal patients what means might be the most appropriate for responding to the former patients' complaints. Because there are a large*

number of complaints and because the information relating to the complainant's dates back to a period over two decades ago, it is taking some time for both the government and the complainants to collect and analyse relevant information. I am hopeful that the parties can continue to make progress on finding a satisfactory means, short of litigation, for dealing with the claims" (received from NZ House of Representatives).

178. I wrote to the NZ House of Representatives on 14 January 1999, advising that in fact discussions had broken down and that we now, did not hold out much hope of finding a satisfactory means of dealing, short of litigation.

179. On 27 January 1999 I sent a letter to David Clarke at the Ministry of Health regarding earlier correspondence in which we sought copies of our clients' records. I inquired whether there had been much progress in bringing files to a central location.

180. On 27 January 1999, and in response to the query about files, Mr Clarke advised that he was still undertaking work to try and locate and gather files in Wellington, but was being hampered by the need for further identifying information such as date of birth and the former addresses of persons in question. He also indicated that he had re-established contact with the Police in an attempt to locate Police records relating to Lake Alice. He noted his previous attempts to locate any information held by the Police had not been successful because the Police advised that most of their files were destroyed after 5 years. David indicated he had asked the Police to double-check.

181. Around the same time through Counsel John Billington QC, we were advised that the Crown Law Office had indicated that it was assisting to finalise a paper to be presented

to Cabinet on Friday, 5 February 1999. We decided to await the outcome of that meeting before we took any further steps towards litigation.

182. There were further discussions between Mr Billington and the Crown Law Office which indicated that Cabinet material was being prepared and that it was hoped that it would go to Cabinet "asap". There was a general indication that presentation to Cabinet could be by the end of the month or slightly beyond.

183. On 16 February 1999, John Billington QC advised that the Crown Law Office had informed him that the briefing paper had now gone to relevant Ministers, and that there was to be an oral briefing "in the near future". Thereafter a paper would go to Cabinet.

184. On 26 February 1999 Mr Billington wrote to Crown Law Office seeking an update regarding the discussions about the proposal with relevant Ministers, and inquiring whether the matter had progressed to Cabinet.

185. In a subsequent discussion between Mr Billington and Crown Law Office, Crown Law Office indicated that the latest position would be set out in a letter that Mr Billington should expect to receive that same day.

186. By 2 March 1999 that letter had still not been received and so I sent a facsimile to Crown Law Office at 10.05am. It indicated that in the absence of a specific written proposal for my client's consideration, there was little alternative but to litigate.

187. At 11.02am, the same day, a letter was received from Crown Law Office stating that *"the Minister of Health had decided after consultation with Ministerial colleagues, and having received advice from officials, that the Government does not consider it will be appropriate to sign an Alternative Dispute Resolution process [e]specially to respond to*

the claims of your clients relating to their stay at Lake Alice Adolescent Unit in 1970s. New Zealand Courts have not squarely addressed the legal issues of the clients' claims and therefore the Minister considers that questions of possible liability and compensation should be properly tested in Court. Until the Court clarifies these issues, non-litigation modes of responding to your clients' claims are seen as premature". The letter is attached at **Exhibit GC1"D".**

188. The Crown Law Office reiterated their stance in another letter the same day confirming they were authorised to accept service of proceedings.

The proceedings

The nature of the proceedings

189. By letter of 17 December 1998 to GCA, Crown Law Office suggested that filing proceedings was still premature, advising that we should wait until the Crown had submitted a paper to Cabinet and that this was expected to happen in February. At the conclusion of that letter, Crown Law Office stated that if a litigation path is pursued *"it is the Crown's clear expectation that there will be separate proceedings each intended plaintiff. Each should be fully particularised."* In other words, in the Crown's view, it was not open for a representative action to be filed.

190. By letter of 22 December 1998, GCA responded to earlier enquiries from Buddle Findlay as to who the defendants in any claim might be. Buddle Findlay acted for Mid Central Health Ltd and in response to an article that appeared in the National Business Review they had been concerned to point out that the client had no liability. GCA now informed

them that *"Mid Central Health Ltd is included as a defendant in the draft statement of claim (enclosed) because Selwyn Leeks was an employee of the Palmerston North Hospital board at material times"*. We also advised that the plaintiffs would seek a declaration as to whether the Residual Health Management Unit or Mid Central Health Ltd is ultimately responsible for any damages award resulting from Dr Leeks' action.

191. During March and April of 1999, we undertook significant work to have proceedings finalised. This not only involved formulating the claim and conducting the ancillary administrative work, but we also had to give a lot of advice to clients to assist them in making final decisions as to whether they would be involved.

The parties and the form of the action

192. A technical issue that had to be addressed was the question of whether the case could be brought as a representative action. The Crown was maintaining that it could not, because the facts of each particular claim differed and would therefore need to be particularised individually. Such a proposal conflicted with our belief that there would be a consolidation of the proceedings and/or that it would be possible to file one statement of claim for multiple plaintiffs.

193. By late February 1999 we were in a position to file the first batch of cases, but elected to delay doing so based on continuing discussions with Crown Law Office.

194. One of the major concerns which we noted with a number of prospective plaintiffs was the fact that proceedings are public in nature, and as named plaintiffs our clients may have found themselves publicly identified as having been held at Lake Alice, a

Psychiatric Hospital. The majority were resistant to the personal taint that they perceived would follow.

195. The proceedings were filed in the High Court at Wellington on 21 April 1999. There were two statements of claim. The first we referred to as the GRO-B proceedings' and that comprised 56 plaintiffs. The second, we referred to as the **GRO-B** proceedings' and that comprised 32 plaintiffs. There was no attempt to proceed as a representative action and each of the proceedings were multi-plaintiff statements of claim.

196. We filed two sets of proceedings because some persons were resident at the Unit prior to the ACC legislation coming into force, whereas others were resident at the Unit after that legislation took effect. This affected the potential damages to be recovered for each group.

197. In both cases the defendant was the Attorney-General on behalf of the Ministry of Health.

Causes of Action

198. The background for the claims were the same for both the pre- and post- ACC Statement of Claims, and in summary alleged:

    a. The management of the hospital was at material times the responsibility of the Crown, through the Division of Mental Health and the Department of Health, pursuant to Section 7 of the Mental Health Act 1969.

    b. The Child and Adolescent Unit was set up in or around 1971 by Dr Selwyn Leeks who was the Director of and had sole charge of the Unit.

c. Dr Selwyn Leeks was at material times employed by the Palmerston North Hospital Board.

d. The defendant was directly liable as manager and administrator of Lake Alice Hospital for damages caused to the plaintiffs by Dr Selwyn Leeks, Child Psychiatrist engaged by the Department of Health, by others engaged or employed at Lake Alice and by patients at Lake Alice Hospital.

e. The defendant was vicariously liable for damage caused to the plaintiffs by employees and others engaged on behalf at the Department of Health.

199. The allegations made by individual plaintiffs were as follows:

a. No valid medical grounds established for admission to or remaining at Lake Alice Hospital.

b. Incorrect or no proper diagnosis.

c. No consent obtained from patient and/or parents or guardians for treatment and/or medication or if obtained not freely given, or fully informed. No adequate consultation with Guardian.

d. Unjustified administration of ECT to temples, legs and knees, modified as punishment, causing excruciating pain.

e. Incorrect or unjustified medication by mouth or intramuscularly, of, but not limited to paraldehyde, as punishment.

f. Incorrect or unjustified medication by mouth or intramuscularly, of, but not limited to paraldehyde, for sedation.

g. Threats of ECT and/or paraldehyde.

h. Sexual abuse by staff.

i. Physical and verbal abuse by staff.

j. Sexual abuse by patients.

k. Physical and verbal abuse by patients.

l. Being placed in solitary confinement within the Lake Alice Hospital.

m. Witnessing and/or hearing others being subjected to threats, sexual abuse, physical abuse, ECT and injections of paraldehyde.

n. Being forced to participate in administering ECT to other patients (including patients' genitals).

o. Being in an environment of intense fear and trepidation.

200. The particulars cited included:

a. Wrongful detention at Lake Alice Hospital.

b. Humiliation, stigma, and loss of self-esteem through wrongful detention in a mental hospital and/or incorrect diagnosis and treatment.

c. Suffered from and will continue to suffer from physical injury.

d. Has suffered and will continue to suffer mental injury and emotional stress and anxiety.

e. Loss of opportunity for education and/or employment.

f. Was denied the opportunity of correct assessment, treatment if necessary and care.

g. Is unable to form or maintain relationships.

h. Diminished quality of life.

i. Lack of respect for authority.

201. The collective causes of action were the same for each proceeding:

a. Breach of Fiduciary Duty

b. Unlawful Confinement/False Imprisonment

c. Assault and Battery

d. Negligence

202. The damages sought were the same for all causes of action and were:

a. General and aggravated damages in the sum of $400,000 (this was not pleaded for the post ACC Plaintiffs, except in the Unlawful Confinement/False Imprisonment cause of action).

b. Exemplary damages in the sum of $85,000 (also not pleaded for the post ACC plaintiffs, except in the Unlawful Confinement/False Imprisonment cause of action).

c. Compensatory damages for economic losses in an amount to be quantified at Trial.

d. Interest.

e. Costs.

Defences

203. To the best of my knowledge the Crown never filed a Statement of Defence. Instead, the Crown Law Office wrote to us on 28 April 1999, saying it required further particularisation before they could file a Defence.

204. We wrote to Crown Law Office on 18 May 1999 pointing out, at this stage, that it is for the defendant to elect whether to raise Limitation Act issues by way of an affirmative defence.

205. On 21 May 1999, Crown Law Office wrote saying their defence was due to be filed on 26 May but that they couldn't complete that without first having further particularisation from us. They sought our cooperation in allowing a reasonable timeframe for this to take place and it was suggested that their defence would be filed 28 days after receipt of the further particularisation.

206. On 3 June 1999, the Crown Law Office drafted an application seeking an order that the statement of claim needed to be further particularised, but this application was never filed. Instead, on 4 June 1999, the Crown Law Office wrote again seeking further particularisation and enclosing a 144-page document and a further 84-page document, detailing what they required.

207. Shortly thereafter the parties resumed discussions about the possibility of issuing a small number of test cases and discussion recommenced on possible alternative resolution processes.

My views on Crown defences

208. I have been asked to comment on the Crown's defences. However, the Crown never filed a formal statement of defence and so I can't comment on what its position may have been had legal proceedings continued.

209. Nevertheless, during the course of our communications, the Crown referred to many issues which potentially, could have been developed into formal defences had there been a need. Throughout our discussions the Crown fairly flagged those issues and

implied that it would likely maintain such defences if the matter had to be resolved through a court process.

210. Plainly, the Crown has the right to present legal defences where it has been instructed to defend proceedings however, I had no way of knowing what instructions it might in fact be operating under and therefore, could only speculate as to its instructions, based upon my observation of its behaviour.

211. Nevertheless, it was quite clear what the Crown Law Office had been charged to do by the then Minister of Health, Bill English, following our meeting on 6 August 1997.

212. At that meeting I suggested to Mr English that a dispute resolution mechanism based on the Cave Creek model, would be appropriate and after some discussion he agreed that officials should explore this more fully. The Minister indicated that he wanted to be able to recommend some sort of solution to Cabinet "in about six weeks' time" and he asked Crown Law to take the necessary steps to refine the proposition and advise on a solution.

213. Therefore, in the context of exploring whether an ADR process akin to the Cave Creek one, should be used, the Crown Law Office had to 'take the necessary steps to refine the proposition and advise on a solution'. This task was directed at providing advice as to a process, and was not directed at focusing say on how legal defences might be mounted against a direct legal challenge. At that point there was no such challenge and indeed, all efforts were being made to identify a process that would avoid the need for a formal legal proceeding.

214. I have no knowledge as to whether the Crown Law Office did in fact provide advice to Cabinet within the six-week period. If such advice was provided, we were never told, nor informed as to the nature of that advice.

215. However, from the date of my meeting with Bill English, the Crown Law Office exhibited behaviour consistent with maintenance of a 'delay, deny, defend' strategy, whereby one party hopes to generally obstruct and delay until the other party runs out of money and/or motivation.

216. During the following months the Crown was trying to maintain any defences that might be available to it, but at the same time it did not want to formally commit to a position before the court, or in communications with us.

217. The Crown insisted it would not file a Statement of Defence until we particularised the claims further. Whether that request was reasonable was never determined by the Court. Although the date for filing the Attorney General's Statement of Defence was 26 May 1999, the Crown Law Office variously stated:

"*However... is unable to meet that deadline in the absence of considerable particularisation...*

...further particulars are also logically required before the Crown can make any decision on the leave and/or limitation questions...

...while we note your comment in your letter 18 May, that the Crown holds statements from some of your clients' and individuals' files, the defendant has no obligation to determine for itself the particulars of the plaintiff's claims...

...first, Mr Billington QC made it quite clear at our meeting in November 1998 that the claimants' statements which were provided to the Crown 'without prejudice' by which, he appeared to mean that they could not be relied upon if the matter were to proceed to litigation...

...secondly...it is established beyond dispute that it is for the plaintiff(s) to properly plead their case...

...in their present form, the claims are simply unable to be answered by the Crown...

...moreover, the fact that the defendant may have access to relevant files is irrelevant to the obligation...

...it is not open to you to suggest that the Crown should somehow fill in the (very substantial) gaps..

...the Crown appreciates of course that adequate particularisation will be a very onerous task... the solution might be to run one or two "test cases" in the first instance...if...not agreeable... the Crown would be willing to consider whatever reasonable timetable you propose (rather than insisting on either the 7-day compliance required by the rules of taking this matter before the judge)...

...provided the particulars given were adequate the Crown could agree to file a Statement of Defence within 28 days of receipt. Decisions about leave and limitations could also be made at that time...if...you propose to oppose the Crown's request for particularisation, the Crown will file an application for an order to that effect...

...as far as discovery is concerned, we are happy for the provision of the plaintiffs' files requested under the Privacy and Official Information Act to continue. Any wider

discovery of documents... will not be possible until the issues between the parties have been adequately defined... only occur after the claim has been fully particularised....

...the Crown proposes to serve a notice requiring further particulars from you by 26 May 1999...

...as far as call over on 25 May is concerned, we propose that the application for leave to proceed be adjourned sine die by consent".

218. During the period between the meeting with the Minister on 6 August 1997 and the Crown Law Office's final letter of 2 March 1999 stating that the case had to go to court, I found the Crown Law Office's position unprincipled. Primarily, this was for two reasons:

a. The Cave Creek precedent:

When faced with potentially difficult legal claims being brought on behalf of the estates, survivors, and families affected by the Cave Creek disaster, the then Solicitor General, John McGrath QC, was able to pose an ADR solution during the first meeting he had with myself and Brad Giles QC. Final agreement as to the process by which those claims might be resolved, was reached within 3 weeks. John McGrath did not seek particularisation of claims and or produce a plethora of technical legal issues in respect of which he required satisfaction before agreeing to such a process. Instead, he immediately recognised the value of a determination process and that once the process had been agreed, it would itself take care of all the attendant technical issues. If the Solicitor General could make such clear-cut decisions on an early and brief review of the situation and then immediately obtain the necessary consents from Cabinet, it seemed to me that the Crown Law Office

could have achieved the same in the face of systematic and long-standing child torture allegations, had it been minded to do so. Again, I have no knowledge as to its precise instructions but there was an obvious inconsistency here which the Crown Law Office never explained.

b. The illogicality of certain prerequisites to consideration of 'process'

The Crown Law Office's correspondence made it clear that there was a range of prerequisites about which it needed to be satisfied before any consideration might be given as to the particular form of resolution process to be applied, and whether it might include resolution of compensation questions. Essentially, such matters were framed around the notion that there was first a "need for a factual basis" for claims to be established. But one manifestation of this thinking was the requirement for particularisation as a pre-requisite to finally determining the question of the appropriate process to resolve the matter. The difficulty with this was that the Crown was simply being asked to decide what process it would commit to. We had cited our reasons for a single stage ADR process before a Determinator but the Crown was maintaining that it needed a plethora of information before it could decide or commit. That was wholly inconsistent with the Cave Creek model, and with common sense. If a court resolution process was finally agreed, then the court process would determine the facts, and deal with issues such as particularisation and all the usual procedural and interlocutory matters. Likewise, if a private ADR process were agreed, that process would deal with those issues in just the same way. Therefore, the simple question of which process to use, did not

give rise to the issues the Crown Law Office sought to maintain. This had been recognised by John McGrath QC when he proposed the Determination resolution process in the Cave Creek case and certainly Sir Duncan McMullin had the ability to deal with all procedural matters once that process started. In relation to Lake Alice claims, a private Determination process would have left the Determinator resolving how the matters of apparent interest to the Crown, would be dealt with. If claims were found not to be "fact based" or to not "reach the required threshold" then the Determinator would remove them from the process. In this way, Crown Law Office suggestions about needing resolution of a range of issues before committing to a resolution pathway, was wholly inconsistent with the path its own former Solicitor General had so effectively marked out with Cave Creek, and they ignored the reality that 'the process' itself would cater for such matters, once it got underway. Finally, the Crown's stance proved inconsistent with what actually happened. Once there was agreement about a settlement, a global sum and a Determination process, Sir Rodney had control over any remaining procedural issues.

219. Ultimately, the Crown's apparent rationale for not dealing/settling pre-action was set out in the Crown Law Office's letter of 2 March 1999: *"...the Government does not consider it will be appropriate to design an Alternative Dispute Resolution process specially to respond to the claims of your clients relating to their stays at the Lake Alice Adolescent Unit in 1970s. New Zealand Courts have not squarely addressed the legal issues your clients' claims may raise and, accordingly, the Minister considers that questions of*

possible liability and compensation should be properly tested in court. Until the Court clarifies these issues, non-litigation modes of responding to your client's claims are seen as premature".

220. That statement did nothing to address my perceptions as to inconsistencies in the Crown's purported position over the many preceding months.

221. In the final analysis, in my view there was from the start ample information before the Crown to suggest a high probability that there had been non-medical use of ECT and paraldehyde in a systematic and unlawful manner over a long period at Lake Alice. There was sufficient evidence before the Crown Law Office to at least suggest there was good cause to suspect that applications of ECT and paraldehyde were punitive and a form of child torture.

222. Therefore, the sheer gravity of the allegations suggested that urgent action should be taken to confront the issues for whatever they may prove to be. Until Helen Clark was elected, the Crown took quite the opposite approach.

223. If on preliminary investigation, there remained a reasonable prospect of the allegations being true in some degree, then why would the Crown seek to defend its position? If an agent of the Crown has acted unlawfully then rather than concealing and attempting to minimise such legal breaches I think the better course of action was to address and confront the issues, for whatever they may be.

Wasted Costs

224. In the final analysis, my clients did receive what they had so vigorously sought to obtain from the outset, namely an ADR process that would resolve individual facts and experiences, and then proceed to resolve fair compensation.

225. Minister Bill English had sought Crown Law Office assessment and advice within "six weeks" of our meeting with him on 6 August 1997. Given the speed with which the same office had worked on cementing a resolution process on the Cave Creek case, that 'six weeks' request was reasonable.

226. Therefore, I believe that the stance taken by the Crown Law Office after the meeting of 6 August 1997, whether on instructions or by unilateral action, forced my client group to incur significantly higher costs than they otherwise would have. In this statement I have supplied ample information about my various offers to complete the work on reasonable terms (even involving legal aid rates) if the Crown was prepared to assist on such a basis. It was expressly warned that in the event these proposals were rejected, my firm would have no alternative but to work on terms which would enable fair recovery of fees and disbursements upon a successful outcome.

227. It would not be hard to calculate what costs would have been incurred had the Crown chosen to enter an ADR process in September or October 1997, as opposed to what actually occurred.

228. In my statement on Part 2 of the Lake Alice affair I will address the question as to why the Crown was happy to offer the majority of claimants in that process, full payment of their legal costs. By the Crown meeting the legal costs component for the majority of

claimants in that second process, a position emerged that was wholly inconsistent with that experienced by all the claimants in the Part 1 determination process. However, the Crown was only prepared to pay the legal costs for claimants in the Part 2 process, if they were not represented by GCA Lawyers. The reasons for this will be discussed in my second statement.

229. Therefore, the position has emerged whereby the claimants in the Part 2 process would never have obtained any readdress whatsoever, had it not been for the successful efforts maintained by the Part 1 claimants, and the fact of Sir Rodney Gallen's report to the Solicitor General. However, the majority of Part 2 claimants did not have to pay any legal costs and eventually, received Sir Rodney Gallen's determination award without deduction. Nevertheless, the Part 1 claimants have been left having to meet their legal costs in full. Owing to the Crown's actions after the claims were first flagged, those costs rose substantially. In consequence, there remains an unjust outcome and I believe the Crown should now resolve that injustice by either, reimbursing the Part 1 claimants for the wasted costs element of their endeavour, or better, reimbursing the Part 1 claimants for their total fees so that final and complete consistency would pertain between the two groups.

The Settlement Process

How the ADR process was developed and agreed

230. In late 1998 Wyatt Creech became the Minister of Health. In early 1999 I became aware that Mr Creech had publicly stated that the National government's position was that there

would be no settlement with the Lake Alice group without a Court judgment. This made it clear that the National government had no intention of engaging in a fair process to resolve claims.

231. I decided to approach the Opposition health spokesperson and see if they might pose questions to Mr Creech during 'Question Time' in Parliament. I then spoke with Annette King's staff and I was informed that my request would be considered.

232. A few days later I was contacted by a member of Helen Clark's support team and I was advised that the issue had been discussed in a Labour Caucus meeting and that Helen Clark, the Leader of the Opposition, would pose questions to Wyatt Creech during Question Time on Tuesday 30 March 1999.

233. I listened to the session on the radio. Helen Clark tabled a transcript of an earlier media interview with Mr Creech in which he ruled out any possibility of an out-of-court resolution. She then put various questions to Mr Creech. He responded in the usual way, with prepared answers.

234. As soon as question time concluded, I emailed Helen Clark thanking her for her efforts and asked whether, if Labour was elected to government at the end of the year, she might consider revisiting the method of resolution at that time.

235. I also suggested that if she was willing to make that commitment, then she might consider making a media statement confirming her stance. Later that day Helen Clark issued a Media Statement accusing the Government of backing away from negotiating compensation for children seriously abused at Lake Alice hospital during the 1970s. She said: "*By forcing the claimants to go to court to seek compensation, Health Minister*

Wyatt Creech appears to believe he can limit the Crown's potential final exposure. One assumes his officials have told him that this is best achieved by contesting the claim through the courts. Mr Creech's decision is shameful. His predecessor, Bill English, conceded that the claimants were "terrorised" and said the Government would attempt to settle without litigation and without hiding between "a whole lot of legalisms". Mr Creech has reneged on that commitment".

236. Little happened on any front until the election. As soon as it was clear that Labour would form a new government, I considered how to best encourage the new Prime Minister to revisit the question of how this affair should be resolved. If the Prime Minister genuinely thought that court action was only intended to limit the Crown's financial exposure, then presumably, she would be happy to re-enter negotiations to find another method of ensuring all issues were properly resolved.

237. I decide to take advice from Tony Timms, who had been long serving President of the Labour Party. This was because, in 1994, Tony and I had been sent by the government on a United Nations Mission to observe the first democratic elections in South Africa. Enquiries now revealed that he was no longer President of the Labour Party and that he had now taken up the position of the Prime Minister's personal assistant.

238. I waited until after the Christmas holiday break and made contact on 19 January 2000. We arranged to meet in the Beehive on 25 January 2000. On meeting with him I briefed him on the overall nature and scope of my clients' claims, how the previous government and relevant government agencies had in my view generally obstructed attempts to

reach a sensible solution, and I reminded him of Helen Clark's statements in the House on 30 March 1999 and of the media statement she also released at that time.

239. We discussed possible resolution options, including the successful approach that had been used by this firm and the Crown in resolving civil claims arising from the Cave Creek disaster. Tony said he would ascertain the Prime Minister's view, stood up and went through a doorway into her office. He returned about five minutes later and informed me that the Labour government would move to settle the affair by some form of resolution process other than through the courts. I was very pleased that the Prime Minister had acted decisively.

240. On 14 February 2000 I wrote further to Tony Timms regarding correspondence I received from the new Minister of Health, Annette King, seeking his advice as to whether communication should now be more properly maintained with the Prime Minister's office.

241. On 15 February 2000 I received a telephone message to call Tony Timms urgently. During that call he advised me that Prime Minister Helen Clark had instructed him to advise me that there had been no change of mind and that she would like to resolve the case out of Court. He indicated that some legal advice was being obtained at Ms Clark's directions and that I was to do nothing further, including responding to the letter from Annette King.

242. Despite mounting pressure from my clients for definitive updates and fielding many enquiries, I continued to have brief, updating conversations with Tony Timms who assured me that matters were progressing and that we should continue to wait.

243. On 7 March 2000 I received a letter stating, *"I have been asked to inform you that the Government is open to the possibility of reconsidering the previous decision and that work is underway at an official level on that"*.

244. I continued to send occasional requests pressing for a more concrete outcome that I could relay to my clients. I received a telephone call from Dennis Clifford of the Prime Minister's office on 14 April 2000, assuring me that our letters had not fallen on "barren soil" but that this type of proposition still needed to go through government processes. He suggested a substantive reply would be available within approximately 3 weeks. A further discussion was held with Mr Clifford on 10 May 2000 who reassured me that progress was being made and he suggested approximately 10 more days until I might hear from them.

245. On 2 June 2000 we received a letter from Crown Law Office in which they asked us to advise whether we envisaged an ADR process might extend to claimants who hadn't yet filed proceedings. They asked for details of those claimants my firm was acting for and asked me to produce authorities to act for them.

246. We responded by advising of 10 further people who had provided the necessary authorities and who were now asking to be included in the ADR process. We noted that we had another small group of individuals who we still needed to follow-up with to finalise instructions.

247. On 7 June 2000 I wrote to my clients advising that Cabinet had approved a proposal to enter into further discussions with a view to moving this case away from the Court and into an arbitration or other ADR process. I advised that this was simply a first step in a

new direction and that it didn't bind the Crown to a particular process. Nevertheless, we hoped to engage in meaningful discussions about the key issues, over the next 2 to 3 weeks.

248. We then made significant efforts to follow-up with all potential claimants because we wanted to ensure that all who may be eligible would be able to participate in any process that might emerge.

249. On 15 June 2000 I spoke with Hamish Hancock of the Crown Law Office as he had largely taken over the day-to-day handling of the Lake Alice case from Grant Liddell. Earlier, Hamish and I had developed a constructive working relationship in the Cave Creek resolution process. We had positive discussions about the way forward and this resulted in my sending a letter of 11 July 2000 to the Crown Law Office. A copy of this letter is attached at **Exhibit GC1"E".**

250. The letter explained the basis of the claims, including some details of the particular causes of action pleaded, and discussed possible relief, losses and damages which would be available at law. It also discussed claim impediments such as limitation, including exceptions to limitation constraints such as disability, equity, late discoverability, and stated how they might apply to my clients. I reminded Crown Law that limitation is only a defence if the defendant chooses to rely on the same.

251. The letter also covered the s124 Mental Health Act 1996 immunity, and the impact of the ACC regime. It concluded with some discussion as to possible compensation parameters, and the general merits of settling.

252. Although discussions continued, no firm agreement had been reached by 21 July 2000 when I wrote again to my clients and during this period the proceedings were kept on foot.

253. In November 1999, the parties had previously agreed that the application before the court should be adjourned until April 2000, and on 11 April 2000 the court was informed that the parties had not yet been able to reach agreement between themselves regarding the appropriate management of the proceedings. The Court was also informed that the plaintiffs had made approaches to the relevant Ministers seeking consideration of an ADR mechanism and although the precise mechanism had not yet been agreed upon, both parties sought a further adjournment. On 11 August 2000, the court was informed that *"counsel for both parties consider those discussions are still fruitful and are hopeful that an agreement as to an ADR process will be reached"*. The matter was adjourned for a further four months.

254. On 4 December 2000 the defendant applied to the court seeking three orders:

    i. that five plaintiffs (from each set of proceedings) submit themselves for medical examinations under section 100, Judicature Act 1908, between 7 and 28 February 2001;

    ii. that those five plaintiffs discover all medical records relating to each of them;

    iii. that the proceedings be consolidated.

255. The Crown Law Office justified the Crown's application on the basis that:

i. it was necessary to determine whether or not the alleged events as pleaded by the plaintiffs in the Statement of Claim contributed psychologically to the plaintiffs alleged current mental conditions;

ii. because limitation is an issue, medical examination of the plaintiffs is necessary to determine whether plaintiffs have suffered under a disability that had prevented them bringing the present action before this time (underlining added).

256. This made it clear that the Crown Law Office appeared to be operating on instructions whereby it was now its intention to run a limitation defence, something that ran counter to the understandings we thought we had earlier reached with the Prime Minister about finalising an ADR mechanism to resolve all matters.

The circumstances of the lump sum award being agreed with the Crown.

257. On 2 June 2000 a letter was received from Denis Clifford the Department of the Prime Minister and Cabinet, stating *"I can confirm that Cabinet has authorised the Ministry of Health, supported by Crown Law, to investigate with you the possibility of establishing an alternative dispute resolution process for the Lake Alice issue. You can expect an approach from the Ministry in the very near future."*

258. By letter on the same date, Hamish Hancock sought my views *"on the form any alternative resolution process might take"* and suggested that after the Crown had opportunity to consider such proposal, the parties' *"legal representatives would then meet to determine the form and structure of such process"*.

259. A draft agreement to submit to mediation/arbitration was provided by GCA to the Crown Law Office on 8 June 2000, in a form not largely different from that finally agreed.

260. Thereafter, correspondence passed between the parties as the parties tried to get closer together on the question of quantum. The Crown Law Office was also quite keen to engage in a process that dealt with issues of liability, so that questions of limitation would need to be argued. They also proposed subjecting all clients to a psychiatric examination. This culminated in the Crown filing interlocutory applications with the Court in December 2000, seeking such examinations.

261. By this time, I was becoming concerned that the Crown Law Office was not acting in accord with the expressed will of the Prime Minister, who confirmed on the same day that we were served with those court applications, that she intended government to settle these claims without recourse to court proceedings.

262. From 1 December 2000 to March 2001, we wrote to Margaret Wilson, Helen Clark, Jonathan Hunt and Annette King, trying to influence the political process with a view to the Crown Law Office being placed back on a resolution track.

263. On 5 April 2001, a letter was received from Margaret Wilson, which indicated she was supporting the Crown Law Office's position, and matters looked as if claimants would be required to produce significant amounts of evidence, that liability was going to be fully argued, and that a timely successful outcome for clients was looking less likely.

264. I arranged to meet with David Caygill to see whether he could act as an intermediary to break the apparent deadlock with the Crown Law Office. He agreed to act as a political intermediary and to try and negotiate a settlement process at a political level. From that

point, all negotiations were conducted through him and I had no further direct contact with the Crown Law Office for some time.

265. The initial question to be negotiated was the form of the resolution process. The Crown Law Office was representing that government wanted a mediation/arbitration process whereby elements of liability could be argued, and quantum would be set entirely by the arbitrator.

266. Discussions also addressed whether there could be a 'fiscal envelope' whereby there would be both a guaranteed minimum, and a guaranteed maximum, for clients. This was thought necessary so clients could be sure that they would receive something tangible by entering the process, and the Crown would have clarity about the upper limit of its potential financial exposure.

267. In exchange for the claimants giving away theoretically higher claims, the Crown was being asked to give up issues of limitation, the Mental Health Act immunity, and some questions of causation.

268. David Caygill secured a meeting with the Solicitor General, Terence Arnold QC, 8 May 2001, and in the course of that meeting, he managed to move the Crown to a position where, instead of wishing to argue liability and quantum in an arbitration process, it was now amenable to putting a global settlement sum on the table and to move directly to full and final settlement. Again, I was faced with a Solicitor General who was being pragmatic and decisive.

269. This was a significant step, as it meant our clients would have certainty that a tangible outcome would result, and they would not have to await an arbitrator's decision as to

whether there was liability in particular cases. A global sum would provide certainty of some payment for all, and probably, in individual cases, such payment would be at a level higher than that which might be reasonably anticipated to be recovered in a courtroom.

270. We sought payment of my clients' solicitor/client costs as an amount of additional to any award but the Solicitor General wanted a single global sum which comprised both the award and the costs. He did not want to negotiate a settlement sum and then have to reach a separate agreement about my firm's fees.

271. The Crown's initial offer was for $4 million calculated as an average of $40,000 per claimant. I thought that would be insufficient because of:

a. the legal costs which our clients would need to meet;

b. the costs of a post-settlement process needed to divide any global settlement sum between the individual clients, these being the direct costs of a Judge to determine that question, and any disbursements my law firm would have to pay to prepare the relevant documents and to attend in the determination process.

272. I saw the appointment of a Determinator as being particularly important. Although payment of a single global figure might put the matter behind the Crown, I was no better positioned than anyone else, to determine what each claimant should properly receive from that global sum, given the wide range of individual experiences at Lake Alice. I did not see how I could enter a global settlement without the extra safeguard of having a suitable expert appointed to determine how the global sum should be divided between class members. I proposed that the Crown agree to the appointment of a retired Judge,

who would be charged with assessing individual claims and then apportioning the global sum to reach a fair outcome for each claimant. The Crown would have to meet the cost of the judge and all attendant disbursements on the determination process.

273. Therefore, negotiations continued on the need for the Crown's offer to increase to cover such costs. We decided to make a counter-proposal of $6,500,000.

274. I had to consider the time, cost, stress, inconvenience and litigation risk, for my clients in trying to achieve more from a court, and weigh the certain benefits of early and certain settlement for the group. In all the circumstances, I thought such a settlement would be fair and reasonable and so did Mr Caygill.

275. The Solicitor General, Terence Arnold QC, expressed no reservations and agreed to support the taking of our proposal to Cabinet.

276. On 7 June 2001 I received a call from David Caygill confirming that Cabinet had approved a settlement sum of $6,500,000, plus the additional costs of the determination process.

277. With agreement in principle now reached, negotiations moved back to discussions between this firm and the Crown Law Office as to the particular terms of the Agreement to Submit to Expert Determination and the client Acceptance form which was required. Sir Rodney Gallen was also involved to ensure he was satisfied with the process, and the number and names of the clients who were to be involved in the settlement process.

278. The Crown's written confirmation of the agreement was received from the Solicitor General on 4 July 2001. It confirmed the number of claimants who would be in the process, that $6,500,000 would be available, that a determination process as set out in

the agreement would resolve how the global sum was divided, and that the process would be conducted by Sir Rodney Gallen.

Sir Rodney Gallen's appointment and the method used to reach determination awards.

279. Sir Rodney Gallen was appointed as determinator after a short discussion between the parties. He was New Zealand's longest serving Judge at the time, had been a Judge in the Court of Appeal, he spoke Maori, was the convenor of the Maori Synod Te Ako Puaho, was a trustee of the Mahi Taki Trust, and had been Chairman of the Commission of Inquiry into the services at Oakley Hospital, which had raised similar issues.

280. Under the Agreement to Submit to Expert Determination, Sir Rodney Gallen was appointed the sole Determinator, and he was charged with determining "the apportionment of the award between the claimants".

281. The award was described in the Agreement as being 'in the nature of an" apology/ recognition award"' and it was stated to be $6,500,000.

The method used to reach determination awards.

282. As to the matter of determining what each claimant's entitlement was as between all of the class members, there was no need for the Crown to take part in this process and so it proceeded with Sir Rodney, myself, and my Associate, Sarah Simmonds.

283. Soon after his appointment, Sir Rodney Gallen suggested that I visit him at his home in the Hawkes Bay, to discuss how the process might proceed. Prior to that meeting, I sent a batch of about 15 statements with attendant medical records and documents so he might start reading some of the claims.

284. On meeting Sir Rodney, we debated at some length how he might make a fair apportionment between class members. I do not believe he wrote down his methodology as the was no cause to do so however, it was fully discussed between us and I recall it being along the following lines:

a. GRO-C

b. As to the balance GRO-C it was clear that he was not required to make a damages award that reflected the quantum that might be obtainable in the courts. Had that approach been taken, then the total awards could either exceed, or fall short of, the global sum available.

c. Therefore, he had to apportion a known and fixed sum, and this meant a method of establishing some form of reasonable proportionality as between client claims.

d. There were many objectionable 'experiences' suffered by my client group and they were listed on one axis of an informal spreadsheet.

e. By placing client names on the other axis of the spreadsheet, it became possible to note which clients had which experiences. For example, not all clients had received ECT. Some clients had only experienced one of two of the objectionable experiences, whereas others had suffered a majority, or all, of them.

f. In considering a particular client's experience in relation to a particular claim, it then became necessary to provide some sort of weighting. For example, if one individual had only received ECT once, but another had received it 25 times, did

that mean the second individual should be ranked as having had an experience that was 25 times worse than the first one? The evidence suggested that those who had suffered ECT on many occasions, at least had a reasonable expectation as to what they were about to experience. However, individuals who had experienced ECT on only a few occasions were often seriously traumatised. Finally, there was evidence that persons who never received ECT but who nevertheless regularly observed others receiving it and the traumatic aftermath, were often more distressed than those who had actually experienced it. For these reasons, Sir Rodney decided a weighting based on a 10 point scale should apply. For example, those suffering less trauma might receive a two point ranking, whereas those who suffered extreme trauma might receive a 9 or 10. The degree of trauma was not to be judged in an absolute sense but relative to the trauma suffered by others in the group. In this way, the objective of obtaining some proportionality as between class members was thought to be more likely achieved.

g. Sir Rodney asked Sarah and I to consider each case in these terms, and he would make an initial determination on each case. Then, having completed a reasonable number of assessments, he would advise his preliminary position and we would then debate the merits of the same. After listening to what we might have to say on particular cases, he would make any adjustment he thought might be required. Our role was simply to point out issues that he may have overlooked or make suggestions as to any matters that he might yet want to consider. We did not

advocate for any particular position, but sought to raise issues that might assist Sir Rodney in ensuring a fair process.

h. We quickly found the system to work very well and Sir Rodney listened carefully on the occasions where we might raise suggestions.

i. His determinations were maintained in a preliminary manner because, as the process unfolded and with his increasing experience of assessment, he felt there may be need for final review and adjustment at the end of the process.

j. Sir Rodney carried out a full review at the end before committing to final determination figures.

Circumstances in which Sir Rodney Gallen prepared his 2001 report on affairs

285. During his assessment of the position, Sir Rodney was at pains to try and give every claimant the opportunity to meet with him and to describe their experiences. In the final analysis, about 41 people met with him, as it was simply not possible for all clients to come to the locations where he held such meetings. We attended with him at each location and assisted him and our clients, in various ways.

286. On one occasion, probably about halfway through the whole process, Sir Rodney came to me in a tea break and asked me how I felt about the process and whether it was achieving what we hoped it would. I confirmed that I thought the process was excellent. He asked if I had any regrets or thoughts about how it could have been done differently. I thought about this for a moment and said that my only regret was that when we completed the process, he was obliged to give me a list of names alongside which there

would be a dollar figure. That would enable me to do full and final distributions to all clients, but that document would not reflect what truly happened at Lake Alice. Indeed, it seemed there would be no official record of what had truly taken place. Although there was no requirement for him to produce anything more than the list of names and numbers I thought there was risk that this dreadful saga would pass into history without any definitive judicial or other record of what had actually taken place. In turn, there seemed no prospect of government developing any future preventive mechanisms. Sir Rodney nodded but said nothing and we returned to a client meeting.

287. About three days later he approached me again and said that he had reflected on my comments and had decided that he would write a report for the Solicitor General, which he anticipated would be passed on to the Attorney General as well. He asked whether I could read his draft before he sent it. I was most surprised but agreed to do so.

288. A short time later he provided me with his draft. I thought it was an outstanding summary of what had taken place and had no suggestions as to changes. I thanked him for making such an effort and expressed my hope that it might achieve some wider good.

289. As we later learned, Sir Rodney Gallen's report provided such compelling insight into what had occurred at Lake Alice, that the Prime Minister was moved to create a second determination process, providing redress for the many people who had not come forward into our group and the first process.

The issues of payment of my clients' legal fees

290. Following completion of Sir Rodney's determination on 14 September 2001, the Crown made payment of $6.5 million to GCA lawyers.

291. The firm's invoices were sent to clients along with a reporting letter on 24 September 2001.

292. Earlier, and as the Determination process advanced, I considered the question of calculating a fair fee so, at the point of distribution, the firm could promptly and accurately account to all clients. Necessarily, I also considered the fact that in every group there is the possibility of one or two individuals taking issue with the quantum of any fee rendered at the conclusion of the matter. Naturally, such risk is greater where clients have never previously dealt with the firm, are resident in other parts of New Zealand or overseas, and where there was little or no opportunity to meet in person with me or my staff.

293. Calculation of a fair fee follows a straightforward process and I ensured that fees were calculated in accordance with the 'Principles of Charging' specified in the New Zealand Law Society Rules of the time. Those rules stated:

"The charges by practitioners for all professional work shall be calculated to give a fair and reasonable return for the services rendered, having regard to the interests of both client and practitioner.

Such charges shall take account of all relevant factors, and in particular:

a. the skill, specialised knowledge and responsibility required.

b. The time and labour expended.

c. *That value or amount of any property or money involved.*

d. *The importance of the matter to the client and the results achieved.*

e. *The complexity of the matter and the difficulty or novelty of the questions involved.*

f. *The number and importance of the documents prepared or perused.*

g. *The urgency and circumstances in which the business is transacted.*

h. *The reasonable costs of running a practice.*

i. *The relative importance of the factors set out above will vary according to the particular circumstances of each transaction."*

294. The work in progress, that had accrued with my firm, to the date the fees were calculated, amounted to $1.55M. (Work in progress is simply the total value of the time recorded in the firms' computer system reflecting the hours spent on the matter). Ordinarily, the work in progress would be relevant to item (b) of the Principles of Charging, namely the 'time and labour expended'. However, that is but a starting point to calculation of a fair fee, as the other principles must also be considered.

a. GCA maintained a general file against which all work for the communal good of the group was recorded. In addition, each client had their own file against which work was recorded that was purely for that individual's benefit. In this way, the general work in progress needed to be divided between all members of the group on a pro rata basis (in relation to the value their individual awards) to provide a base value figure that was applicable to each individual. Then, such personal time as may have been recorded on an individual's private file, would be added to the base figure. In this way the total time recorded for each client was ascertained, and

depending on how much individual work was involved, that total varied as between clients.

b. Then, the other Principles of Charging had to be assessed and weighed in the calculation. In this regard, all Principles of Charging were considered in relation to the project as a whole. This was appropriate as most of the work was carried out for the group as a whole and ultimately, that was the source of the overall value for all.

c. Then regard had to be given to the terms of the solicitor/client agreement between the firm and the clients. That agreement provided for the firm to receive" a *fair and reasonable fee",* but incorporated a cap on fees whereby a final figure could *"not exceed 40% of the monies recovered inclusive of GST".* Therefore, under the contract, as a maximum, the firm could charge no more than $2.6M i.e. 40% of $6.5M.

d. Having carefully considered application of the Principles of Charging, I came to the view that in broad terms, each client should pay a total fee to GCA of not more than 30% of the monies recovered. Thus, I decided to make a further depreciation on the fee cap in the contract in regard to my firm's fees. Lawyer A's fee was additional to my firm's fee.

e. It is to be noted that the firm was not calculating a single fee. It acted for 95 individuals and so there needed to be 95 separate invoices.

295. Although I was sure that my approach to calculation of a fair fee was correct, I decided to obtain independent legal advice as to whether my proposed approach to fee calculation was fair and reasonable.

296. I sought an opinion from Colin Pidgeon QC a person I had never met or worked with but who was held in high regard in legal and Crown circles.

297. Mr Pidgeon prepared a 19-page opinion dated 15 October 2001, attached at **Exhibit GC1"F"**. Among other things, and in dealing with the facts (paragraph 1.12), he said:

"This brief summary does not do justice to the horrifying and remarkably consistent tales of abuse which occurred on Lake Alice. It was difficult for the opinion writer to remain unmoved at reading some of the details of the treatment, which seemed incomprehensible in a civilised community".

298. In addressing the effects of this case on GCA he said:

"1.14 The undertaking of work on behalf of the claimants was a significant financial burden in respect of the law firm concerned in which there is only one principal and three staff solicitors. This was essentially a class action in respect of which delicate judgement was required to identify the legal, media and political issues necessary to go through to achieve satisfactory result for the clients".

1.15 It was likely to and in fact did have significant consequences for the general practice and the firm's ability to do work for existing clients.

1.16 The publicity surrounding the claim and the clients' general awareness of the preoccupation of the firm with this litigation resulted in the gradual withering of the firm's general practice for the four years that they were engaged in the work.

1.17 I am advised that initially, the practice had sufficient general practice work to ensure that the firm, at least broke even each year provided that Mr Cameron, the principal, did not take any drawings. At the outset of the exercise the firm, and Mr Cameron personally, had borrowings of about $350,000 secured by mortgages over the matrimonial home and a section owned by a family trust.

1.18 By late 2000 the debt had risen to about $600,000 and the Cameron's decided to sell the family trust asset. This resulted in $400,000 being injected into the firm and then on to the bank to repay debt. $200,000 of debt remained with a fresh overdraft facility being set at $100,000. Security then consisted of the family home worth about $350,000.

1.19 The overdraft limit was extended to $120,000 in July 2001. The situation was rapidly approaching when Mr and Mrs Cameron had no equity at all in their property.

1.20 This extraordinary involvement by the law firm for the benefit of their clients, was at significant financial cost to the practice and to Mr and Mrs Cameron personally.

1.21 Further, the proceedings had a relatively high risk element. First of all there was the risk that the Limitation Act would defeat the claims on the basis that they were out of time, secondly there was the fact that many of the witnesses would have been minors at the time, some of them delinquents, and with possible problems over credibility. Thirdly, there was the issue that the nature of the claim was moving into rather uncharted territory. In my view, it is difficult to see any other New Zealand legal firm being prepared to take on and in effect fund this highly speculative litigation, tying up the firm's resources for a number of years. The firm is to be commended for their action".

299. As regards the calculation of fees, Mr Pigeon noted:

"2.5 Indeed, it is important to note that the ultimate test is, are these charges in the circumstances "fair and reasonable?"

And further:

5.8 In relation to Lake Alice. The following matters are in my view relevant:

a. *work in progress, that is unbilled time recorded on the file would be approximately $1.55 million. After allowing for the administrative work involved, reporting to clients and paying them out. This figure on a time and attendance basis would not exceed $1.6 million.*

b. *Over the four years that the file has been operating, all work has been recorded on the solicitors' system following hourly rates:*

Principal	*$200 – 250*
Associate	*$175 – 200*
Staff solicitor	*$165 – 185*
Students	*$150*

In my view, those rates are reasonable and are a starting point in determining what is in overall general fee.

5.9 I've been supplied with a great deal of information, setting out in detail work involved in bringing the matter up to the point of settlement which I do not intend repeating in this opinion. Suffice to say the time spent is reasonable and the result is, in my view, outstanding for the clients.

5.10 Although, as I have indicated, clients have the right to apply for a cost revision of fees, a cost reviser would be entitled to take into account that the clients have agreed

on a fair fee not exceeding 40% of the monies recovered on the client's behalf, inclusive of GST, such fee would also include the not inconsiderable sum claimed for fees of $300,000 from [Lawyer A] the original solicitor who acted for a number of complainants.

5.11 I am advised that the fee to be charged, inclusive of GST and the fee payable to [Lawyer A], would be $2,577,760. GST is $256,849. Assuming [Lawyer A's] fee was $300,000 this would mean that Grant Cameron Associates would nett $2,020,910, a figure below the maximum fixed in the solicitor client agreements.

5.12 If the level of fees were obliged to come under scrutiny of the New Zealand Law Society, the fee or percentage figure that it would be looking at would be the net figure for the firm. It would appear that the percentage of Grant Cameron Associates net fee on total recovery is significantly less than 40% and would be just under 30%".

300. Mr Pigeon QC's conclusion was:

6.1 This fee is comfortably within the parameters of what might be regarded as "reasonable" on the basis of the authorities outlined above. The fee charged is demonstrably a reasonable and proper fee.

301. On 20 October 2001, an article appeared in the *Evening Post* in Wellington, recording one of the class members' apparent concerns about the level of fee invoiced to them by my firm. Broadly, the implication was that GCA had somehow exploited its clients in terms of the level of fee charged to them. The fee was suggested to be "up there" among the highest legal fees ever charged in the country.

302. It was plain that the reporter had the mistaken impression that only one fee had been rendered to the Lake Alice group and it was implied this might be $1.8M. Of course,

there were 95 separate invoices and the complainant reported in the article, had been invoiced $25,949.90, an amount that could never be described as one of the "highest legal fees ever charged in this country".

303. Shortly afterwards I received a telephone call from David Caygill who informed me that Helen Clark, the Prime Minister, was very concerned at what she had read in the *Evening Post*. She had asked him to investigate the position and to report back.

304. We agreed that he would visit me in my office the following Saturday morning so that we could discuss the position. At that meeting I explained the position to Mr Caygill, traversing the following key elements:

a. From the outset it was clear that clients could not pay meaningful legal fees or disbursements and so could never have obtained any form of remedy on conventional fee arrangements.

b. Legal Aid was not an option, and Counsel John Billington QC agreed with me on that point. All clients had been fully advised on this matter and were given the option of advancing their claims on that basis, with another law firm, if they chose to do so.

c. The events at Lake Alice were so egregious that it was plain that government needed to address the matter.

d. At the outset it was my intention to seek an alternative dispute resolution process which, given the facts, I thought any reasonable government would promptly engage with. I would then seek payment of our reasonable fees for any enquiry or other process that might then be agreed with government.

e. I variously offered the Crown to conduct the inquiry phase of any agreed ADR process on concessionary rates, if the Crown was willing to pay the same:

f. initially I offered to do specific work for a fixed fee of $80,000;

g. later I proposed providing a wider range of services within an ADR context, for $250,000;

h. then on more than one occasion I suggested to the Crown that I provide services to my group at legal aid rates. Such suggestions were all rebuffed.

i. It transpired that Government did not want to engage in any form of ADR process and so I was obliged to continue funding the matter myself.

j. However, the Crown was advised in writing on several occasions that if it would not agree to assist the group with reasonable legal fees then this firm had no alternative but to proceed on some form of contingency basis which necessarily meant having a contractual arrangement that provided a reasonable return to off-set the obvious risks in maintaining such a case.

k. The Crown ignored such advice and so the contracts with clients necessarily contained provision for an increased level of recovery in certain future circumstances.

l. Nevertheless, a self-imposed cap on the maximum fees was included in the solicitor/client agreement so that clients were assured of receiving a minimum of 60% of monies recovered, regardless of the amount of work completed by the law firm. For example, if the firm recovered a relatively small sum from the Crown such as $500,000 but found that it had incurred $1.5M of work in progress justifying a fair

fee in an even higher amount, the firm could only ever recover up to 40% of the sum recovered i.e., $200,000 plus GST and whereupon the firm would have to write-off $1.3M of value. Conversely, if a large sum was recovered of say, $6.5M, then the maximum payable to the firm was $2.6M (GST inclusive). In both scenarios, clients would recover 60% of the monies recovered.

m. From the outset care was taken to ensure fee calculations accorded with the New Zealand Law Society Principles of Charging.

n. Although I formed my own view as to how fees should be calculated for each of the 95 clients who were to share in the global settlement amount, I sought an opinion from Colin Pigeon QC, a completely independent party.

o. Later, and after two complaints about my fees had been lodged with the Canterbury District Law Society, I also sought comment from John Billington QC. As Counsel in the case, he was intimately aware of all the circumstances in the case.

p. Both Queens Counsel agreed that the fees rendered were fair and reasonable.

q. Contrary to the impression that may have been gained from the *Evening Post* article, the firm had not rendered one fee. Instead, it rendered 95 separate fees, one for each client in the action. The fact that all these matters settled at the same time, meant a large sum of money was debited from the global settlement award held in trust, but that was a product of the number of clients and nothing more.

305. I gave Mr Caygill copies of our contract, the correspondence with the Crown Law Office where we had sought Crown assistance at legal aid rates, and copies of both Counsels' letters.

306. David Caygill met with the Prime Minister early the following week and then rang me to say that he had fully explained the position to the Prime Minister and that *"you won't be hearing from us further on this matter"*. He made it clear that the Prime Minister understood that I had approached fees calculations correctly. No issue about the fee calculations was ever raised again by the Labour government.

The New Zealand Law Society fee complaint

The circumstances giving rise to the complaint;

307. By letter dated 5 November 2001 to the Canterbury District Law Society, Client 8 submitted a complaint and a request for costs revision.

308. By letter of 23 November 2001 to the Canterbury District Law Society, Client 9 alleged misconduct on my part, and sought a cost revision of GCA's invoice for services, delivered with the distribution of their share of the Determination sum.

309. I commenced work on a response to these complaints but on the 7th of February 2002, I sought John Billington QC's views on the matter. As Counsel in the proceedings, Mr Billington was thoroughly familiar with the case and it was my intention to provide his response to the Law Society, and I later did so.

310. By letter of 12 March 2000, Mr Billington QC wrote to me in the following terms:

1) Costs

"I am aware that you arranged for each of the Lake Alice clients to have a cost agreement signed. I understood the reason was that this was a highly contingent claim in respect of which the Crown was not prepared to accept liability. In particular, if there

was a trial, the Crown had open to it the ability to seek separate trials for defendants and to raise the Limitation Act defences.

Against that background, the prospect of obtaining Legal Aid was limited, if not virtually impossible. For my part as Counsel, I could see some real difficulty in certifying that these cases should be legally aided when there were so many legal impediments to ultimate recovery. Further, the ultimate recovery was likely to be less than the cost of the proceedings. From my own experience with the Goodhealth Wanganui group defendants I could see Legal Aid was going to be of little, if not, no help.

With regard to quantum of costs, it ought to be appreciated that you took on this case on the basis of the payment of fees being wholly contingent on outcome. You had written advice from me that the prospects of recovery would be really limited and would depend substantially on your negotiating skills. To take on a case of the magnitude of Lake Alice with no guarantee of payment and have to undertake preparation of statements of claim and supporting witness statements was a financial burden I do not believe most firms in New Zealand would have wished to become engaged in. I know from my involvement with you there were many hundreds of hours of time spent on this case by you and your staff. I also know that the chances of recovery were extremely limited. The fact that you were able to secure a settlement of the level you did was fortuitous and a testament to your tenacity.

Applying normal costing criteria, the complainants in this case have been treated appropriately in all respects".

2) Complaint of misconduct

"I know little of the matters in respect of which the parties complain. I should say however, that the settlement and the ability to recover was a direct result of all parties banding together and becoming unified in their claim against the Crown. If parties had set off on their own, as is foreshadowed by the complainants, the chance of recovery would in my estimation have been close to nil.

It was essential that the plaintiffs sign the cost agreement, and ultimately, the settlement documents. Without their participation settlement was unlikely to be achieved.

I am more than happy to answer questions from you or the Law Society committee considering this matter should it assist".

311. The Canterbury District Law Society convened a Special Committee to hear both the complaints lodged. As the complaints were so similar and arose from the same facts, the same Special Committee considered both matters and issued a decision in each case, on 19 August 2002.

Client 8 complaint

312. By letter dated 5 November 2001 to the Canterbury District Law Society, Client 8 submitted a complaint and a request for costs revision.

313. The Committee noted that a solicitor's charges *"must be fair and reasonable*", and that they must comply with the New Zealand Law Society's 'Principles of Charging'. The Committee also recorded that it had been *"assisted by an opinion provided to the solicitors by Mr Colin Pigeon QC, dated 15 October 2001…".*

314. It was noted that," if *no settlement was reached with the Crown, no fee would be payable by the claimants, other than the sum of $100 as a contribution towards anticipated costs and disbursements*".

315. The Committee accepted that *"the solicitor is entitled to a success fee, given the fact that the vast majority of claimants, including the applicant, had no legal case upon which, if the matter proceeded to litigation, they could recover any monies whatsoever. The negotiation of the settlement at a figure of $6.5 million was achieved by extremely careful and skilful management of the process by the solicitors. Particular skills were required to manage the political process in dealing with various politicians from both main political parties and achieving an extremely satisfactory result, given the weakness of the claimants' legal position. The committee is satisfied that a success fee of 50% above the actual value of the time recorded is justified in this extraordinary case. Further assistance is gained from the United Kingdom Law Society Guidelines which suggest that a success fee in conditional matters should not exceed 25% of the sum recovered, or be more than double the normal fee that would be otherwise recoverable if charging had been on the usual basis. The fee in this case is within those guidelines".*

316. Also, it was noted:

"in this case, the risk component was so high a success fee towards the higher end of the scale permitted in the United Kingdom could properly be charged in this case."

"In all the circumstances the Committee is satisfied that the fee charged to the Applicant by the solicitors in this case was fair and reasonable for the work done..."

317. The remaining complaint pertained to Legal Aid, where it was alleged that *"the complainant had not been advised "that he would not be eligible for legal aid".*

318. The Committee was satisfied, based on contemporary documents produced by my firm that" there *is no substance to this complaint"* and that in fact, he had been fully advised on legal aid issues.

319. In conclusion, the Committee commented, "*there is no evidence of any professional misconduct by the Solicitors in relation to any of the matters raised by the Applicant*".

Client 9 complaint

320. As regards Client 9, there were four elements to the allegations of misconduct, and they were addressed by the Costs/Complaint Committee as follows:

a. Undue pressure at the time settlement agreement signed.

"The Committee is satisfied that there is not the slightest hint of unprofessional conduct in the solicitor's dealings with the applicant at this time. Furthermore, subsequently, the applicant wrote to the solicitors in glowing terms, thanking them profusely for their efforts on her behalf".

b. Crown should have paid the legal costs

"Again, the committee is satisfied there is no evidence of professional misconduct. The solicitors achieved a significant increase in the initial offer from Crown of just under $4 million, and that increase roughly equates to the costs charged by the solicitors and [Lawyer A].

The [solicitors] letter of 5 July 2001 made it clear that the solicitor's fee would be deducted from the applicant settlement monies before her settlement cheque was forwarded to her. The applicant agreed to accept the Crown's offer on the basis".

In referring to the fact that a second Lake Alice compensation process was later commenced by the government, the Committee noted:

"It is distinctly possible that the claimants on this later group will not have to pay up to 40% of the awards on account of legal fees. Such an occurrence is not unusual in test cases. Often when a test case is brought, the person bringing the case will have to pay significant legal costs. Other people then piggy-back on the efforts of the first claimant, and end up in a significantly better financial position as a result of not having to meet the significant legal costs of the test Applicant. That is an unfortunate fact of life in litigation. It does not mean that the solicitor who acts for the test applicant is acting unprofessionally in charging proper legal fees for the test Applicant.

Therefore, there is no basis for either reducing the solicitor's fees or making a finding they have acted unprofessionally because a subsequent group of claimants will not have to meet the same legal fees as the Applicant in this case".

c. <u>Support group</u>

The complainant alleged my firm did not allow contact between group members until March 2002. The Committee noted:

"In the Committee's view was not unprofessional conduct for the solicitors to have made this decision regarding an embargo on providing a list of the names of those people who wish to join the contact group".

d. Legal Aid

The complainant alleged that GCA failed to provide opportunity for the client to apply for legal aid. The committee noted:

"The Committee is satisfied, based on the contemporary documents produced by the solicitors that there is no substance in this complaint. The initial solicitor/client agreement recorded that the solicitors would not undertake work on a legal aid basis. The solicitor is not compelled to accept work on a legal aid basis. The earlier letter from the solicitors to all clients dated 18 August 1997, canvassed in full the issue of legal aid and invited the applicant, should she wish to explore legal aid issues with another lawyer, she was free to do so. The applicant chose not to do so and cannot now complain that she should have been able to pursue the claim against the government on a legal aid basis".

321. As regards the cost revision component of Client 9's complaint, the Committee noted that the essence of the complaint was that the fees charged by the solicitors were *"not fair or reasonable and should accordingly be reduced by the Committee…".*

322. After traversing the evidence, the committee variously noted:

"The total fee rendered by the solicitors and [Lawyer A] amounted to 39.97% of the total settlement negotiated with the government of $6.5 million".

"In its deliberations the committee has been assisted by an opinion provided to the solicitors by Mr Colin Pigeon QC, dated 15 October 2001…".

"… The underlying basis of the agreement still seems to have been that if the claim did not succeed, either through litigation on negotiation, then, no fee would be charged."

"The committee accepts that the solicitor is entitled to a success fee, given the fact that the vast majority of claimants, including the applicant, had no legal case upon which, if the matter proceeded to litigation, they could recover any monies whatsoever. The negotiation of the settlement at a figure of $6.5 million was achieved by extremely careful and skilful management of the process by the solicitors. Particular skills were required to manage the political process in dealing with various politicians from both main political parties and achieving an extremely satisfactory result, given the weakness of the claimants' legal position. The committee is satisfied that a success fee of 50% above the actual value of the time recorded is justified in this extraordinary case. Further assistance is gained from the United Kingdom Law Society Guidelines which suggest that a success fee in conditional matters should not exceed 25% of the sum recovered, or be more than double the normal fee that would be otherwise recoverable if charging had been on the usual basis. The fee in this case is within those guidelines".

"In this case, the risk component was so high a success fee towards the higher end of the scale permitted in United Kingdom could properly be charged in this case."

"In all circumstances the Committee is satisfied that the fee charged for the Applicant by the solicitors in this case was fair and reasonable for the work done..."

323. The Committee's conclusion was that:

"Therefore, in the view of the Committee, there is no evidence of any professional misconduct by the solicitors in relation to any of the matters raised by the applicant".

324. The nett outcome of the three complaints was that none were upheld in any degree whatsoever. GCA was found to have acted properly regarding all issues raised. None of the complainants too their complaints any further.

The complaint made to the Medical Practitioners Board of Victoria

325. On 20 May 1999, we received a call from our, Client 10 advising that, a few months prior, he had made a complaint to the Medical Practitioners' Board of Victoria (**MPBV**) about Dr Selwyn Leeks. We knew of one other client, Client 11, who had also made a complaint at that time.

326. On 25 May 1999 we took a call from a lawyer at Kensington Swan who was making inquiries on behalf of the Medical Council of New Zealand (**MCNZ**) which was somewhat interested in Dr Leeks. The specific query was whether the legal proceedings had been filed.

327. On 16 August 1999, we received a telephone call from Robert Bardsley who was the Assistant Solicitor for the Victorian Government in Australia dealing with the MPBV complaint about Dr Leeks. Their position was, they were only able to deal with issues which arose in their jurisdiction (only Victoria) and they were hamstrung as regards conduct which occurred outside their jurisdiction. Nonetheless, they had concerns about Dr Leeks in light of the Lake Alice allegations, and I was informed that the MPBV wished to be briefed on the action we were bringing.

328. At his request, we provided the Statement of Claim on a confidential basis to them. Mr Bardsley told us that if anyone who contacted us who wished to lay a complaint with the

Medical Board of Victoria, we should encourage them to do so and provide the contact information which he left with us.

329. I received an email back from Mr Bardsley on 26 August 1999 advising he would not be able to do much in relation to events that occurred in NZ, but referred to investigations which might be permitted in relation to a complaint in Melbourne.

330. Mr Bardsley then informed us on 14 September 1999, that one of our clients did lay a complaint with the MCNZ, and at his request, asked if we were able to provide a copy of his medical records and personal statement completed about his Lake Alice experiences.

331. It was not a part of the class action to pursue disciplinary complaints. More and more people continued to come forward and our biggest concern at that time was around the fact that, for limitation purposes, time continued to run. For that reason, our efforts focused on trying to formerly resolve the matter of limitation. (The Crown had still not confirmed if it would be raising a limitation defence). At this point, we were aware that both the MCNZ and the MPBV had both been made aware of the allegations and were making preliminary investigations regarding the same. We left it at that and our focus remained on the litigation.

332. The matter remained with the MPBV and MCNZ until post settlement of the Part I claims. Then on 15 October 2001, Mr Bardsley contacted me again advising that Dr Leeks had gained a considerable amount of publicity as a result of the action. He sought more details regarding how the matter was concluded. We provided information to the point permitted by the settlement agreement. He also wanted to know if the MCNZ was taking

any action and said that in the event they were not, his client would have to think "*seriously about it given his practice here*". He inquired whether our clients would assist, if indeed his client were to pursue some action against Dr Leeks. He then wrote to me again on the following day advising that the MPBV had since confirmed they were now considering their options and would shortly make contact with their NZ counterpart.

333. I responded to Mr Bardsley on 18 October 2001 advising that we heard nothing from the MCNZ but had heard from a reporter that day who indicated to me that the Royal Australian & New Zealand College of Psychiatrists (**RANZCP**) was motivated to commence an Inquiry into Dr Leeks. My thoughts at the time, were that the MCNZ might not be motivated to make any inquiry (or incur the costs of doing so) of their own volition because Dr Leeks had been out of the jurisdiction for some time. I suggested it might be worthwhile for me to write to the MCNZ.

334. I then received a telephone call from the RANZCP in October 1999, and was advised they may potentially become involved in an investigation.

335. I updated my clients that the MPBV would potentially be conducting an investigation about Dr Leeks (possibly with the RANZCP). Essentially, it was to be determined whether Dr Leeks could continue practising as a Psychiatrist in Victoria. I sought consent to providing their materials and making a formal complaint to the MPBV.

336. Unfortunately, on 26 October 2001, the RANZCP, informed me that they could not, by themselves investigate the matter as they were not a quasi-judicial body but they could however still coordinate with the MPBV.

337. By 15 November 2001, 47 of my clients had consented to the release of their information to the MPBV for the purposes of making a complaint.

338. I was then contacted by Mr Bardsley again on 16 November 2001 when he advised that John Smith, the Registrar at the MPBV was coming to NZ for a couple of days. He wanted to meet with me and potentially look through some material which was relevant to the case. I then met with John Smith on 29 November 2001 and he advised he would send me a letter with details of what was needed in order to lodge formal complaints.

339. I chased Mr Smith on 16 January 2002 for a copy of the letter which he said he would send to me. After receiving this, we then began collating the documents and drafting a letter of complaint to the MPBV on 26 January 2002.

340. The complaint was finalised and sent on 5 March 2002. The complaint was made on behalf of 47 individuals. I sent documents which related to 25 of those individuals who we considered represented the full ambit of the allegations. We also sent some key medical reports from the time.

341. I updated my clients on the same day that the complaint had been made. I explained that from here, the complaint was out of our hands. It was for the MPBV to determine what action would be taken, whether charges would be laid and if so, what the nature of those charges would be. We undertook to pass on any information to them that we received.

342. The MPBV confirmed receipt of the complaint on 18 March 2002 and we were advised it was being given consideration.

343. I then received a letter dated 25 June 2002 from the MPBV advising they had delegated their powers under Section 24(3)(b) Medical Practice Act 1994 to Ms Amanda Watt, a Solicitor with the firm Minter Ellison. Ms Watt was to conduct a preliminary investigation into the matters raised in respect of Lake Alice. The next step was for her to review the documentation provided and prepare a report and recommendations for consideration by the Board. We were to be contacted once they had heard back from Ms Watt.

344. The next we heard was in an article on or around July 2003, "Victoria Medical Board takes action on "Shock Doc". It was stated: "*the MPBV announced in July 2003, that having sought legal advice they will now investigate Dr Leeks*".

345. Then on 29 November 2003, I received a telephone call from Trudie Griffin at Minter Ellison (I believe she took over conduct of the matter from Ms Watts). I was advised during this telephone call that Dr Leeks had applied to renew his registration and therefore, they now had jurisdiction to investigate him. I was then asked to attend a telephone conference with Minter Ellison, to be arranged shortly.

346. Trudie then wrote to me on 3 December 2004 in which she confirmed Minter Ellison acted on behalf of the MPBV and that she had arranged a telephone conference between myself, Richard Maidment (Senior Counsel), Sara Hinchey (Junior Counsel) and herself for 8 December 2004. She asked if we could send her a list of witnesses, specifically, she was interested in the names and contact details of nursing staff and management that were employed at the unit at the relevant time.

347. We updated our clients immediately on 6 December 2004. Given the passage of time since the initial complaint was made, we wanted to ensure that those clients who initially

agreed to assist in any investigation were still happy to do so. We fielded telephone calls and emails from clients expressing their interest to remain involved. It is fair to say my clients seemed fairly incentivised to stop Dr Leeks renewing his medical licence.

348. On 8 December 2004 I attended the telephone conference as requested providing as much input as I could to assist the investigation.

349. I received a further letter from Minter Ellison dated 13 December 2004 asking that I give my views, specifically in relation the individuals whose files had been sent to the MPBV regarding:

a. the inappropriate prescribing and administering of modified and/or unmodified ECT treatments in cases where the patient diagnosis would not support this treatment;

b. administering of unmodified ECT treatments as a form of punishment;

c. making patients administered ECT to other patients;

d. administering unmodified ECT to the genital area of a patient in the presence of two patients which was given as a form of punishment;

e. failure to obtain informed consent for modified and/or unmodified ECT treatments; and

f. inappropriate prescribing of paraldehyde injections for this behaviour.

350. I liaised with Ms Griffin between then and August 2005 in order to assist with her investigations as best I could.

351. I heard nothing more until 20 July 2006, when I received a letter from Ian Stoney of the MPBV dated 20 July 2006. He confirmed that Dr Leeks had now ceased all forms of medical practice and he had given MPBV an undertaking that he will not return to

practice in his jurisdiction or any other. Ian stated that it was the Board's role was to protect the community, and as they had now done this (because Dr Leeks was no longer practising), the Board had decided not to proceed with the planned formal hearing into his professional misconduct. Ian informed me that Dr Leeks had been advised that if he breached his undertaking which he gave to the Board, the Board would proceed with the formal hearing. He thanked my firm and my clients for participating so generously in the investigation.

352. Finally, I received a letter from Minter Ellison on 1 August 2006 confirming exactly the contents of the above letter.

The complaints made to the New Zealand Police

Why complaint was made

353. I have set out earlier in my statement, details of the initial consideration which was given to making a complaint to the Police and the efforts I had made to date to secure any documents which the Police held about complaints which had previously been made to them. (We were advised no such documents could be located).

354. When the Determination process was over and payments had been made to all clients, I decided to revisit the question of a possible complaint to the Police. I was of the view, that nothing in the settlement agreement prevented my clients from making such a complaint.

355. As expected at the outset, during the course of the civil proceeding we obtained a vast amount of new information. We now possessed 95 client statements, a large number

of medical records (which in some cases recorded use of ECT and paraldehyde as punishments), witness statements, and other materials evidencing what had taken place. Finally, we now had the benefit of Sir Rodney Gallen's report to the Solicitor General, which provided an accurate record of events.

356. In October 2001, my team undertook some research as to what crimes (and the categorisation of those crimes) might have been committed.

357. I considered it was now an appropriate time to write to my clients laying out our thoughts as to what crimes might have been committed and to canvass their interest in making a complaint to the Police.

358. I wrote to my clients on 19 October 2001 inquiring if any of them had an interest in lodging a criminal complaint. I told my clients that I considered there was a prima facie case to show that Dr Leeks committed either "assault on a child" or "cruelty to children", both of which were offences under the Crimes Act (and potentially other offences relating to "assault" might also have committed). I remained respectful to those who, understandably, indicated that they did not wish to be involved in any further action against Dr Leeks or the other staff as they simply wanted to get on with their lives. I acknowledged also, that some of them indicated that they did feel comfortable with the idea of discussing these events with a Police Officer, should a complaint be made. I therefore sought authority from those individuals to make a group complaint to the Police Department on their behalf. In the event they wished to make a complaint, I requested their agreement to send on material relevant to their individual allegations (including medical records and statements). I put it to them that if the Police received enough

complaints, the Crown might be obliged to seriously consider extraditing Dr Leeks to stand trial in this country.

359. We received consent from 34 clients saying that they wished me to take that course of action.

My communications with the Police, the specific complaints made and the evidence presented

360. I wrote to the Police Commissioner on 16 December 2001 giving a summary of the background facts and informed him the vast majority of my clients alleged that Dr Leeks (and sometimes other staff members) gave them applications of ECT without lawful justification. I advised that in the main, they were given unmodified ECT which was contrary to accepted medical opinion back in the 1970's and at the time of writing. I alerted the Commissioner to the fact that medical literature at the time suggested it would be extraordinarily unusual to give ECT to a child.

361. I then went on to explain that the majority of my clients were also injected with paraldehyde, a drug apparently used in mental institutions as a way of disabling violent adult patients. In appeared that in the Unit, such injections were given to inflict pain. I explained that it had been noted in medical records that ECT and paraldehyde were given as punishment and there had also been some independent corroborative witness testimony that this was the case.

362. I detailed that it seemed highly likely that Dr Leeks had elected to carry out a private experiment in "aversion therapy", whereby, through the application of extreme pain he sought to change child behaviours. I pointed out that Dr Leeks had virtually admitted as much in a videotape which was recently shown on television in NZ and Australia. I

added that no such experiment had been authorised by the hospital superintendent, the Palmerston North Hospital Board or the Crown.

363. I advised the Commissioner that my clients had alleged child torture and pursued civil claims for assault and battery. Further, many of them alleged unlawful confinement and sexual abuse (at the hands of staff members and in some cases, other inmates).

364. Some of my clients wished to file formal complaints with the Police given the evidence of probable criminal offending. I was due to be in Wellington the next day so I requested, albeit at short notice, to meet with a suitably senior member to discuss the matter with me. I informed the Commissioner that the matter had been something of a "hot potato" since Jonathan Hunt demanded a full Commission of Inquiry in 1977 and in fact, a limited Commission of Inquiry which was held that year (into the case of only one child) and an Ombudsman's investigation (also that year) had made some critical findings.

365. I informed the Commissioner that I had served in the Police myself for some 10 years and said that I was fully aware of the potential resource that might need to be applied to a full investigation of this affair. I also explained that I appreciated such an investigation might be conducted in the atmosphere of considerable media interest to speculation. I considered there were ways in which these aspects could be properly managed and to that end sought an urgent meeting.

366. The letter at that stage was not a formal complaint. I made it clear also that I would not be making a formal complaint when visiting the following day, either. I was simply seeking to relay the background and circumstances in some detail to an officer who I

might be assured, would have had some ongoing responsibility for the file once the complaints were lodged early in the New Year.

367. I met with the Police in January 2002 at Police National Headquarters. I do not recall who I spoke to. I was informed that upon receipt of the formal complaints, the Police would now very seriously consider my clients' complaints against Dr Leeks and whether there was any action which could be taken.

368. Documents were collated and the formal complaint was then made on 7 March 2002 to National Headquarters, Wellington. In this letter, I informed the Police that 34 of my clients wished to lodge formal complaints. With their consent, I sent the Police copies of their statements and medical records along with some background material to assist in the Police in understanding the Lake Alice environment.

369. I updated my clients on the same day the complaint had been made. As with the complaint to the MPBV, I explained that from that point, the complaint was out of our hands. It was for the Police to determine what action would be taken, whether charges would be laid and if so, what the nature of those charges would be. Again, we undertook to pass on any information to them that we received.

My assessment of the strength of the evidence supporting the complaint

370. I have mentioned that when making the formal complaints to the Police I enclosed my clients' statements and medical records.

371. Regarding the administration of ECT:

    a. Firstly, the supporting evidence (medical files and witnesses), showed that none of the children had been committed to the Unit under the mental health legislation at

the time. As a matter of common sense, I could see no plausible reason for giving ECT to children who has not been diagnosed with psychiatric conditions.

b. Secondly, many of the witness statements, stated that ECT was given to the children, without anaesthetic. I could see no reason for ECT to have been given to children in an unmodified manner.

c. Significantly, the witness statements made allegations that ECT had been administered, in some cases, on the jaws, hands, legs, knees (both knees at the same time) and genitals. Again, there seemed no plausible reason for giving ECT in this manner.

372. It did not seem to me that ECT was being given as a legitimate treatment at all, and so I considered there was good reason to believe an investigation should take place as to whether ECT was being administered as a punishment and whether that amounted to criminal activity.

373. We recognised that it was necessary to obtain the view of an appropriate medical expert to determine whether such behaviour could be reasonably deemed "treatment". We advised the Police that we had discussed this matter with some appropriate experts (and gave them details of those discussions). We informed them that in the view of those experts:

a. in no circumstances should ECT be given to a child;

b. it should never be given without anaesthetic, but only in accord with a strict protocol;

c. it should never be given as a treatment for epilepsy (the explanation apparently given by Dr Leeks to the Commission of Inquiry in 1977).

374. Aside from ECT, there were further allegations of abuse about the manner in which paraldehyde was administered.

a. There was a further allegation by an individual, namely, that a nurse stood on his throat to hold him down, whilst another nurse injected him with paraldehyde.

b. Another individual, alleged that, when he was 9 years old, he was injected in the temple with paraldehyde. He was told he was given the injection because he had been misbehaving at home. He alleged the injection caused him to become unconscious until the next day during which time he had urinated and/or defecated on himself. When complaining the next day, a further injection of paraldehyde was administered in his buttocks. He then suffered such severe pain in his joints and bones that it became necessary for him to be sent to Wanganui Hospital for treatment.

375. I had major concerns also about the way in which paraldehyde was being administered in the name of "treatment".

376. Then aside from allegations regarding the use ECT and paraldehyde, of those who complained to the Police, at least five individuals alleged they were raped and sexually abused on one or more occasions by **GRO-B-300** and/or other staff. One of those individuals, alleges he was raped whilst unconscious and says he woke up covered in semen and requiring stitches to his rectum.

377. When the above was combined with the veracity and credibility of a such large number of complainants (95) and that of a few supporting witnesses, I felt there was overwhelming evidence that not only had ECT and paraldehyde been given to children

without plausible explanation, there was significant evidence these children were being physically and sexually abused. Worse, in the complete absence of evidence suggesting a genuine medical need for the application of ECT to the majority of the Unit residents, the evidence strongly suggested that there had been systematic child torture.

378. As there was "good cause to suspect the commission of offences", I thought the threshold for the Police to commence investigation had been met and the department had a duty to make appropriate enquiries. That duty was much more compelling because the evidence did not indicate minor offending but to the contrary, was suggesting systematic torture of children.

The Police response and relevant communications

379. After lodging the complaint, I received a letter from WW Bishop, Detective Supt, National Crime Manager on 11 March 2002. He confirmed receipt of the allegations and the documents I had sent. He advised that before he could initiate an inquiry, he would be seeking a legal opinion from their advisors and he would be in touch in due course with details of the proposed action they intended to take.

380. I cannot locate any further correspondence from the Police in relation to this complaint. It was however reported in a Newsroom article, "Lake Alice, a personal journey" dated 21 January 2020 (updated 6 January 2021): "*In 2002 the NZ Police received complaints from 34 Lake Alice patients, which included allegations of inappropriate use of ECT by Leeks. When approached by the media, Leeks responded, "I am not worried. This has all been dealt with before. I am still practising". In September 2005 a Police National Headquarters' spokesperson said there had been no disclosed activity or intervention*

with patients at Lake Alice that amounted to criminal offending on the part of Leeks. On that basis there was neither requirement nor authority to seek his extradition. Leeks has always denied any criminal offending or professional misconduct at the Adolescent Unit".

My assessment of the Police investigation from 2002 to the present day.

381. I can't comment on the quality of the Police investigation after the complaints were lodged, because I never heard more from the Department. I expected the Police to make contact which each complainant and take matters from there.

Other steps taken to assist the Police investigation, including recent developments

382. Only after this Royal Commission commenced its inquiry did I hear further from the Police. I was informed that a Detective Inspector from Police National Headquarters was now coordinating further inquiries and in due course I was contacted. Police visited my office and sought access to my Lake Alice files. My file was held in about 30 large file boxes and were in storage. In due course they obtained copies of a large amount of material so that they could advance their inquiries. I have not heard further as to how those inquiries might be proceeding.

Statement of Truth

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

Signed GRO-C

GRO-C

Dated: 1 June 2021

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