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

Under	The Inquiries Act 2013
In the matter of	The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions
Royal Commission:	Judge Coral Shaw (Chair) Ali'imuamua Sandra Alofivae Mr Paul Gibson
Counsel:	Mr Simon Mount QC, Ms Kerryn Beaton, Mr Andrew Molloy, Ms Ruth Thomas, Ms Finlayson-Davis, for the Royal Commission Ms Karen Feint QC, Ms Julia White and Ms Jane Maltby for the Crown Mrs Frances Joychild QC, Ms Alana Thomas and Tracey Hu for the Survivors Ms Moira Green for the Citizens Commission on Human Rights Ms Susan Hughes QC for Mr Malcolm Burgess and Mr Lawrence Reid Mr Michael Heron QC for Dr Janice Wilson Ms Frances Everard for the New Zealand Human Rights Commission Mr Hayden Rattray for Mr Selwyn Leeks Mr Eric Forster for Victor Soeterik Mr Lester Cordwell for Mr Brian Stabb and Ms Gloria Barr Mr Scott Brickell for Denis Hesseltine Ms Anita Miller for the Medical Council
Venue:	Level 2 Abuse in Care Royal Commission of Inquiry 414 Khyber Pass Road AUCKLAND
Date:	22 June 2021

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A. Good.

Q. And that must be acknowledged. But the other thing I want to acknowledge is that today you have publicly expressed reservations in the light of what you've heard.

A. Absolutely.

Q. That takes courage and insight to acknowledge that what you thought was right at the time.

A. Sure.

Q. What you believed was in the interests of these children --

A. Yes.

Q. -- may not well have been.

A. May not have been.

Q. And I want to acknowledge that you have --

A. Thank you.

Q. -- had the courage to actually change your mind in light of what you've seen. So you haven't stuck steadfastly to a point of view.

A. No, thank you.

Q. So I appreciate that. And I appreciate that it's been a hard yard for you. So I'm happy to say that it is now at an end.

A. Thank you.

Q. Thank you, Vivienne, for sitting with your husband, and you can now go and have a break as the rest of us will do. We'll take a break.

A. Thank you very much.

Q. Thank you.

Adjournment from 11.32 am to 11.50 am

CHAIR: Good morning Mr Heron, welcome to the Commission.

MR HERON: Thank you very much, good morning Commissioners, thank you. **[Mic turned on]** I had even practised that a number of times. Thank you Mr Molloy.

CHAIR: Don't worry, we all make mistakes. And I've just about made another mistake. I am supposed to say before we go any further that the embargo placed on Mr Hesseltine's evidence is now lifted and is able to be published. Right.

MR HERON: Now Your Honour, Dr Janice Wilson is in the witness box. I understand you do the formalities.

JANICE WILSON

CHAIR: Yes. Good morning, Doctor. It's Dr Wilson is it?

A. **[Nods]**.

Q. Yes, thank you, thank you for coming. If you just take the affirmation please. Do you solemnly, sincerely, and truly declare and affirm that the evidence you'll give to the Commission will be the truth, the whole truth and nothing but the truth?

A. I do.

Q. Thank you.

QUESTIONING BY MR HERON: Dr Wilson, I'm shortly going to get you to read your witness statement which is WITN0529001, but you have, I think, at the start just an acknowledgment you were going to commence with.

A. E ngā Kōmihana tēnā koutou, ngā mihi nui ki a koutou, tēnā koutou, tēnā koutou, tēnā koutou katoa. Ko Janice Wilson ahau. My name is Janice Wilson and before I begin I would like to acknowledge the survivors of the Lake Alice Child Unit.

Q. Thank you, if you would then take us just at normal speed from paragraph 1 of your witness statement. Occasionally I might ask you to pause, but if you just read at normal speed, thank you.

A. As I said, my name's Janice Wilson, I'm currently the Chief Executive of the Health Quality & Safety Commission of New Zealand. I held the statutory role of Director of Mental Health from 1993 to the year 2000, and I'm a psychiatrist by training.

I understand that the Royal Commission of Inquiry into abuse in care is conducting a case study in relation to the Lake Alice Child and Adolescent Unit with a view to conducting this hearing today, and last week I think.

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

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

Q. Just pause there, I won't get you to read the headings, but as you've set out there the headings are responsive to the letter that you mentioned of 10 March. So if you just pick up and read the substantive paragraphs from para 6.

A. As mentioned I'm a Chief Executive of the Health Quality & Safety Commission in

New Zealand. I have been in that role since 2011. Prior to that I was the Deputy Director-General at the Ministry of Health. I was the Director Deputy-General of Population Health and prior to that the Deputy Director-General Mental Health, and then I was clearly the Director of Mental Health and Chief Advisor to the Ministry of Health from March 1993 to June 2000.

Q. And you have your curriculum vitae which I won't take you to but that's WITN0529002. And if you pick up at para 7.

A. I trained as a medical doctor during the 1970s, graduating in 1976. I became a registered psychiatrist and fellow of the Royal Australian and New Zealand College of Psychiatrists in 1982 and worked full-time as a consultant psychiatrist at Wellington Hospital until late 1988 except for some part-time work during 1987 when I had a young infant.

My role as Director of Mental Health was a statutory role, as outlined in the Mental Health (Compulsory Assessment and Treatment) Act 1992. That legislation came into effect in November 1992.

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

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

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

I think I was asked to attend the mediation meeting with Ms McInroe by Crown Law and Health Legal to provide a sense of professional safety as a clinical psychiatrist with awareness of the risks involved for Ms McInroe, but I don't recall or remember the meeting or any details.

Although I was aware of the Cameron class action, I do not recall specific details of what role, if any, I had in it. I was aware that there were other Lake Alice Adolescent Unit claimants and the materials provided to me for the purpose of preparing the statement

show handwritten notes from a meeting with the then Minister of Health, the honourable Wyatt Creech. My advice at that time was that it would be damaging for victims to go through a process like the mediation Ms McInroe attended. I believe that I advised that if there was another course that would allow Ms McInroe and others to be heard, and that allowed for an appropriate apology then that other process ought to be pursued.

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

I have been provided with Cabinet papers that were prepared for the honourable Annette King when she was the Minister of Health which were produced when I was the Deputy Director-General of the Mental Health Directorate in the Ministry of Health. This was a second tier management role. At that time there was another Director of Mental Health and Director of Mental Health and Chief Advisor at that time. And I signed the papers in my role as Deputy Director-General on the advice from my officials, as I was the most senior person with the content knowledge, so that would have been the reason why I signed the papers in the usual course.

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

I can remember hearing in the media about complaints regarding Dr Leeks when the first inquiries were held in the 1970s when I was a medical student. I believe there would have been intermittent media comments following those inquiries through the 1980s when I was doing my psychiatric training and in my early years as a psychiatrist.

I recall Professor John Werry, a child psychiatrist based in Auckland, was outspoken in the media in the 1970s and 980s regarding the complaints about Lake Alice and some of the psychiatric practices used on children and young people during that time. I was aware, therefore, as a practitioner that there were conversations happening and that some of them pertained to Dr Leeks. In addition, these issues, ongoing inquiries into harm experienced by patients and emerging evidence of more appropriate service responses to

people with mental illness, led to wider professional and public discourse on the appropriateness of institutions such as Lake Alice as places for inpatient treatment and care.

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

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

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

CHAIR: Doctor, sorry to interrupt, may I ask you a question about that paragraph. You say that your experience indicates these institutions could be places where treatment would be given for bad behaviour. Are you able to be a bit more specific about that experience? Is it actual experience or is it what you've heard?

A. I was at Porirua Hospital as -- first went there as the Acting Medical Superintendent in the late 1988 and then as a manager of the mental health part of Porirua Hospital after the area health board reforms. Until I went to the Ministry, so until March 1993, and, you know, there was no doubt that I came across complaints from patients and practises of particularly some older nursing staff that could be perceived as abusive and treatments used as, you know, particularly medication as punishment.

I also, of course, had heard stories, so you know, being a practice psychiatrist I heard stories similar to stories that you are hearing, but not as distressing or as bad, but certainly stories nevertheless, of staff who -- this was, you know, this was an era where corporal punishment was still legal, where smacking your children was still legal and, you

know, untrained staff that were not fully trained may have been pushed to the point of, you know, of hitting and being abusive in that kind of sense.

Q. Yes, that just leads to one further question, and that is that we have heard from indeed past staff that there was very limited training, particularly for nurse aides and people working directly with patients; is that something you would agree with?

A. Yeah, well, I only know from my experience at Porirua Hospital, which did have what was considered to be a very good training school, both for psychiatric nurses and for nurse aides, and I think perhaps what was called psychiatric assistants were first introduced by the training at Porirua Hospital, so there was -- and that might have been so in some of the other psychiatric hospitals, I think Cherry Farm was also pretty progressive in terms of its nursing practice in trying to get training up to a much higher standard.

Q. Thank you, sorry to interrupt Mr Heron.

QUESTIONING BY MR HERON CONTINUED: No thank you Your Honour. Para 22 then.

A. So I would have given that advice verbally to Health Legal and also to the senior solicitor that was working with the Ministry from Crown Law when the claims were live. And that would have been the view of most of my colleagues, my psychiatric colleagues at that time.

The merits of the complainants' claims insofar as they related to the use of unmodified ECT, were generally accepted by psychiatrists as serious. While ECT generally had and continues to have a place in treating patients and people, I do not think that psychiatrists now or then would have regarded the use of unmodified ECT as appropriate. And certainly I do know that ECT was not appropriately given for children or young people.

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

I swore the affidavit because I was asked to do so given the procedural hurdles that made responding to the claim difficult for the Ministry and the Attorney-General.

Q. Just pause, I'm sorry, just to orient those listening, you're now talking about an affidavit you

swore in 1995 in support of an application to strike out Ms McInroe's claim and you've talked about that affidavit relating to process and in fact the ability to recover documents and other materials. Just so we orient listeners. Then if you pick up from the second sentence at para 25.

A. Thank you. The affidavit did not comment on the merits of Ms McInroe's claim. It was relevant to the process and procedure of litigation, and the Attorney-General's ability to meaningfully participate in that process.

Paragraph 26 just acknowledges that I have -- I was provided with a draft version of the affidavit. That I actually have the final version as well.

Q. Yes, that's WITN0529003, thank you.

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

I should say at that particular time Lake Alice Hospital was closing and the notes had been transferred to what was then Whanganui Crown Health Enterprise. And it was difficult to -- my belief was it was difficult to find where the notes were, they were in some lost kind of place, and also many of them had been damaged through to due to some kind of water leak that had happened at Lake Alice.

Q. The next paragraph you come to deals with the mediation between Dr Leeks and Ms McInroe and the question in that letter was about confidentiality or secrecy, para 28.

A. I understand that mediations are usually conducted in confidence. I expect that Crown Law would have been the decision-maker, but the requirement for "secrecy" in quotations could have been to do with Dr Leeks' insistence on that, and his part of being brought back to New Zealand.

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

Q. Thank you. The next questions you were asked were about the Grant Cameron class action and your involvement in that starting from para 30.

A. Unfortunately I have no knowledge or recollection of the settlement process itself or the decision-making in this area. I was not involved in detail in this matter and I am not sure

whether one or other of the claims was prioritised. My view was that, you know, officials at Crown Law were trying to do their best they could through the process.

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

Q. Now the next question you were asked was about a further psychiatric assessment Ms McInroe was required to undergo.

A. To the best of my recollection I do not know that -- I didn't know that Ms McInroe was required to undergo further psychiatric assessment, and at that particular time I was not the Director of Mental Health or the Chief Advisor Mental Health.

Q. And then a further question about the location of that assessment being at the Mason Clinic.

A. I do not believe I had any visibility on this process or decision-making. And I do wonder if proceeding at the Mason Clinic had to do with the location of the relevant psychiatrist who was undertaking that assessment who is a forensic psychiatrist, whom I regard as a very good practitioner.

Q. And was that Dr Brinded was it?

A. Yeah, Dr Phil Brinded.

Q. Thank you. From 34.

A. I do not know whether the assessment could have been handled differently because I don't really understand, to be honest, why Ms McInroe was required to undergo that process.

That said, when you look back at things in retrospect, you know, you can always improve things and they could have been handled differently. I think if Crown Law or others thought Ms McInroe needed an independent psychiatric assessment, it should have been in a neutral place that made her feel safe, if it had to be conducted at all. It would have been preferable to conduct the assessment in a place of her choosing and she should have been advised she could bring someone with her if she so wished.

CHAIR: If I can ask a question about that, again Doctor. You say you don't know why she was required to undergo that process. Does that mean you don't know why she was asked -- why a second opinion was, or a second examination was called for in the first place?

A. Correct. Correct.

Q. Do you have a reason for that?

A. Well, it never -- I think from the evidence that I recall about her complaint and the process, I think it was clear that she did not have a psychiatric disorder, and that she was there in

Lake Alice for behavioural issues.

Q. Yes, thank you.

QUESTIONING BY MR HERON CONTINUED: The next question asked of you on behalf of the Commission was in relation to training as to obligations under the United Nations Convention Against Torture or the New Zealand Bill of Rights Act, and you start that at para 36.

A. I didn't receive any specific training on either the UN Convention Against Torture or the New Zealand Bill of Rights 1990. But I was expected to read these and understand them myself, of course, in my position.

So my understanding is that the 1992 Mental Health Act was enacted to bring our mental health system in line with the New Zealand Bill of Rights. I didn't have training as such, but I understood what the relationship between the New Zealand Bill of Rights and the 1992 Mental Health Act was, in the sense that the 1992 Mental Health Act gave patients New Zealand Bill of Rights consistent rights to legal representation, the right not to be incarcerated unless the incarceration complied with mentality health legislation, that is there is a clear reason for taking away someone's liberty and the presumption being that even compulsory treatment would occur in the community.

I do not think the convention materially impacted on the Ministry or the work of the Director of Mental Health until the 2000s. In preparing the statement I undertook some research and understand that New Zealand ratified the convention on 10 December 1989 and then ratified the optional protocol to the Convention Against Torture and other cruel, inhumane or degrading treatment or punishment on 14 March 2007.

I do not recall the convention being much discussed within the Ministry prior to the early to mid-2000s. At that point my recollection is that the Ombudsman's role assumed new significance in the mental health sector and the convention was relevant to the work done by the Ombudsman in relation to mental health. I was by then the Director Deputy General and not the Director of Mental Health.

Q. Now you are asked about your contact with Medical Council and the College, psychiatrists and other related authorities and you answer those from para 40 on.

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

I do not recall having any contact with Professor James who was in Australia at that time or his immediate successor, Dr Thakshan Fernando, on the topic of Dr Leeks or

about the Lake Alice Adolescent Unit itself.

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

I note that I was President of the Royal Australian and New Zealand College of Psychiatrists from 1997 to 1999 and during my presidency it was agreed that I would focus specifically on Australian psychiatric matters to avoid the potential conflict of interest in New Zealand. To the best of my recollection allegations against Dr Leeks did not come on to the College's agenda in my time as president and I do not recall such issues being raised.

The New Zealand branch, or what was called the New Zealand National Office of the College did not bring any allegations relating to Dr Leeks to the Australian branch of the College during my presidency. These letters referred above would indicate that allegations against Dr Leeks were raised with the Royal Australian and New Zealand College of Psychiatrists in 2001 and I note that it wasn't myself who took the allegations to the College. I am also aware on the basis of materials provided to me by the Ministry of Health that in 2001 the College, through its then Chief Executive, was vocal about asking the Medical Practitioners Board of Victoria to investigate the allegations against Dr Leeks after the New Zealand Government had apologised and compensated his former patients.

Q. Yes, thank you very much Dr Wilson. If you remain there and answer questions from Mr Molloy or anyone else, thank you.

CHAIR: Thank you Mr Molloy.

QUESTIONING BY MR MOLLOY: Dr Wilson, good afternoon, my name's Andrew Molloy, I'm Counsel Assisting the Inquiry. Thank you for coming along today. I'll be leaping about a bit through your statement but I think we'll comfortably get through in the time we've got. Look, were you the first Director of Mental Health appointed under the new Act in 92?

A. Correct.

Q. And I think you've referred towards the end of your statement about some of the particular protections that it introduced. And this isn't an exam question but in a broad colloquial sense as someone who practised before and after that Act, what, to you, were some of the shifts that it brought about in the way that you practised and in the way that patients were cared for?

A. Well, probably the most striking change in the 1992 Act was the ability to treat people in

the community under compulsory treatment. The second most striking thing is that it put in a stepped process of assessments, so there had to be a proper assessment by a psychiatrist, there was a responsible clinician who needed to initiate that assessment, and there was the right to -- the patient had the right to have legal representation. So it was the first time that that was introduced and there were specific processes of review. In addition, they could -- the District Court, through the Family Court, needed to review the compulsory treatment within a certain time. I have to admit that all of that kind of time process is not right in front of my head at the moment, but those were the significant changes.

Q. Indeed, I do emphasise it wasn't an exam question, it was really just an impression that would be helpful. I think just moving through, you talked a little bit further along in your statement about a sort of a general awareness about Dr Leeks. I'm looking at paragraph 17. You're talking about recalling -- there was something going on and there were media reports and you also recall Professor Werry being involved and making comments in the media at the time. When did you actually qualify as a psychiatrist?

A. 1982.

Q. And you've done your medical degree, you've completed that by about 76 I think?

A. Yes, correct.

Q. And so from then until 82, was that period taken up with obtaining the qualification in psychiatry?

A. I started my psychiatric training towards the end of 1978.

Q. And was there then a specific component on child psychiatry?

A. No. No, hang on, no, we did have to do a three month -- yes, three months.

Q. You may have no idea about this now, but has that changed since, is it more rigorous than that or is it a longer period than that if you wish to practise?

A. I don't -- sorry, I can't answer that question.

Q. That's fine. Just coming on, I think, to paragraph 20, we're now talking about the litigation that Ms McInroe brought in around about 1994 and I think at that time you were involved at the Ministry?

A. Correct.

Q. And I think you've exhibited the affidavit that you swore in support of the strike-out application that the Attorney-General brought for her claim. I understand that that was a procedural step that was taken. I think you've alluded to the fact that you were provided a draft copy of your affidavit?

A. The final copy, yeah.

Q. You provided the final copy. I think there was a -- you may or may not recall this, there was a written comment on the draft that was forwarded to you which indicated I think someone had been talking to you and said you may not be -- something to the effect that you were sympathetic to the claim, you wouldn't go so far as to say you didn't believe the claim, something along those lines. That seems to come through in the statement that you've provided.

A. Correct.

Q. You had some sympathy with that claim.

A. Correct.

Q. Even then.

A. Correct.

Q. From the very early day.

A. Absolutely.

Q. So that's even before the further step when the Cameron litigation comes on and there's a mass of maybe another 50, 60, 70, 80 similar claims are being made. So at that point I think you say in your statement --

CHAIR: Just stop there, did you have a response to that? Because I think Mr Molloy jumped from sympathy for the McInroe claim, and then there were some other claims.

MR MOLLOY: My point really, ma'am, was the sympathy arose on the first claim, it didn't need the mass of claims, the sympathy appeared to arise immediately.

CHAIR: That's the point, I wasn't quite clear what the point was.

QUESTIONING BY MR MOLLOY CONTINUED: Thank you, we'll develop the other as well.

I think at paragraph 20, Dr Wilson, you say, "In my view the claims lodged were reasonable. I thought then and I still think now that the stories are compelling and believable." When you say "reasonable", what did you mean by that?

A. There was, I thought, reasonable evidence in Ms McInroe's claim of unmodified ECT which was not appropriate, of misuse of behavioural Aversion Therapy, which I would have regarded as inappropriate, and probably misuse of drugs. So I think that her statement was compelling and believable. And also, you know, I was basing that on my experience of in my time as a clinician of hearing stories of patients feeling traumatised when they were in psychiatric hospitals.

Q. Thank you, and I think you mentioned yourself you'd been at Porirua and so the context in which you're making these comments was your own experience in practice of what had

happened?

A. Indeed.

Q. Thank you. Can I just refer you to a document, it's an old document, you won't have seen it for a long time, it's MOH000425, if we can bring that up. It should be on the screen shortly. If we just have a look at that, if I can call out the Health Report cover sheet at the top of the page. We can see there a date, I think it's 17 July 1997. And then if we go down the page to the bottom we see your name there as Director of Mental Health. I think you're ticked as the first contact. Then if we go over the page to page 2 of that document, again it's headed "Options to respond to issues raised by former patients of the Adolescent Unit at Lake Alice Hospital".

If we drop down to the first paragraph under the heading "Introduction", it says you, and I think that's referring to the Honourable Bill English to whom it is addressed, you have sought an analysis of the situation relating to a group of former patients of the adolescent unit at Lake Alice Hospital. This memorandum provides information in response to various questions asked.

I'm just going to take you down to the bottom paragraph of that page. It says, "On the basis of the information currently available to the Ministry, the allegations contained in a letter that had been forwarded are of sufficient concern to warrant further investigation. Our view is that even by the standards of the time, the treatment provided to the patients of the adolescent unit was inappropriate and possibly unlawful." Then you say, "Whether this is indeed the case can only be determined as a result of a more detailed investigation." And then the report goes on.

So again, I suppose I'm just really asking you to confirm this is a further example of the impression that you've already indicated in connection with the McInroe litigation in 95, is it fair to say that when the further allegations came through a year or two later from the Cameron litigation group, really you were equally sympathetic that there was something to see here?

A. Yes, and that is correct, and I also was of the view that an investigative process would have been preferable to an adversarial litigation process.

Q. An investigation, what might that have involved?

A. Well, I think similar to what we are doing currently, what you are doing currently. You know, inquisitorial process. I mean we still live, I hope, in a country that, you know, thinks about fairness and needs to hear the stories from other people and you can only do that through a process that would either be through litigation through a court process or an

adversarial process or through an inquisitorial process. I had always believed it would be more beneficial for the complainants to have an inquisitorial process for investigation.

Q. I think you say, and I'm probably jumping back in time now in context, if we have a look at paragraph 22 of your statement. Again, this is back in time now, we're back in the context of the McInroe claim. You've said you thought at the time that her claims were reasonable, and at 22 you say, "I would have said as much verbally to Health Legal." You also say "That would have been the view of most of my psychiatric colleagues."

A. Yes, I think that's correct.

Q. Do you think that voice was sufficiently heard in the Ministry?

A. Yes, I think that the Health Legal team certainly heard it. I was senior enough and I think I had, you know, a good respect. I do think the Crown Law heard it. I do think there were a number of ministers that heard it. But, you know, there is a whole legal and policy process that has to be worked through, both within the negotiation with the litigants and their lawyers and then within the process of advising ministers who changed and Government changed too and they have to take things through Cabinet of course. So, you know, there is a -- it's in a process and that takes time. But I do believe that everyone that I talked to had sympathy for this.

Q. I just want to -- we're sort of jumping about, but is there a video available? What I'd like to do is take you back in time a little bit again, there's a video of two psychiatrists, New Zealand psychiatrists, I think it was mid to late 1970s and it was probably taken in the context of over the Mitchell in inquiry or the Ombudsman's inquiry into Lake Alice. One of them is a Dr George Cross, I don't know if his name is familiar to you, one is Professor Werry. We'll play it then I'll ask you if it rings true to your recollection.

(Video played).

(Dr Cross) - "Well in my experience, the conditions for which ECT are appropriate in an adolescent are extremely rare. The kinds of adult mental disorder in which ECT's used for are rarely found in adolescent and I've been in practice now in consulting practice for 25 years and I think I've just used it once and that was for a teenager of 15 years who was suffering from acute schizophrenic confusion.

(Interviewer) - would you give it on it aggressive uncontrollable child?

(Dr Cross) - Absolutely never.

(Dr Werry) - The situation is that the conditions for which ECT are indicated in adults do not occur in children, or if they do occur they only occur extremely rarely, which means that while one can't say there are no indications for ECT in children, I have yet to

see one."

Q. Again, both of those clips were probably before you were qualified, but was there anything in that that doesn't ring true? I'll ask it in two parts, certainly now, and would it have rung true at the time, as you viewed it then?

A. No, I would agree with that, I think that that was what I understood in practice and even though I wasn't practising in the 70s, but my understanding that that was the view of the profession, yeah.

Q. I think in paragraph 23 you say "I do not think psychiatrists now or then would have regarded the use of unmodified ECT as appropriate in the context of children."

A. Well, even in the context of adults you wouldn't have used unmodified ECT in the 1970s.

Q. Thank you. There's just a couple of other questions I want to ask, and we're jumping to a different subject now. I think you've talked about the meeting that Ms McInroe would have had with Dr Leeks as part of a mediation or a settlement attempt. And you said that, "It's my view that any meeting with him would have been re-traumatising for Ms McInroe."

With your clinical hat on, help us to understand that process, how would that have been traumatising? Or perhaps just your colloquial hat, maybe it doesn't need a clinical hat.

A. Do I have to explain that?

Q. Yeah.

A. I think when you experience abuse and you have identified the abuser, in any situation it's traumatising to see that person again. I think all of us would understand that.

Q. Can you understand how that was able to happen at the time and again that's a --

A. Yeah.

Q. That's a question with the benefit of hindsight.

A. It is really. You know, I think that clearly there was an attempt to try and think of an alternative to the litigation process or an adversarial process, which probably may have been more traumatising. And so, you know, an alternative dispute resolution was proposed and obviously organised by Crown Law. And I think that honestly I can't recall it at all, which is, you know, interesting in itself, although, you know, there's many patients I've seen over the years that have told me, you know, some deep and troubling things that I can't recall either and I wouldn't be alone in that, many psychiatrists would say the same thing. And I think that I, you know, I went to try and create a better environment of safety, but, you know, it didn't occur, did it, yeah, it was a failure.

Q. Leaping about yet again to another subject -- thank you for that answer. Just going forward to your statement to paragraph 43, and when you're talking about being President of the

Royal College. You don't recall allegations against Dr Leeks coming to the fore in your time as President, I mean would that have been a matter of conflict for you at that time?

A. Yes, it would have, but, you know, there were ways that we had put in place to deal with that conflict. There were -- it's interesting because my time in those two years in the 1970s we dealt with quite a lot of, it seemed like a lot, maybe it was ten in total, which is a lot of psychiatrists who were accused of boundary violations, and there was only one New Zealander but in that New Zealander I stood aside while that was heard.

Q. Again, we'll be looking at the question of complaints to the Medical Council and you've got a circumstance where in the early 2000s, a claim involving nearly 100 victims of abuse has been resolved by the Crown, has been settled, with acceptance of, I can't recall exactly how it was couched in the apology letter, but anyway an acceptance that treatment had fallen far short.

We've got a Medical Council in New Zealand, but no processes seem to have been undertaken by the Council at that time. Again, looking back, is there a difficulty in the profession engaging in that kind of process about its own, are there things that get in the way of it that we need to think about and get around, because you have what looks like extraordinary derogations of duty and boundary excesses, if you want to put it like that, and yet no attempt to call it to account within the professional body that might be expected to do so?

A. I think that that would not be the case today, you know, I think that the -- and well, you need to, of course, talk to the Medical Council itself, but I think that the processes that have been revised over the last particularly 10 years or more are much tighter. It probably was not as rigorous as maybe you or I would like in the 1970s. You do recall, of course, that Dr Leeks left New Zealand and once he had resigned from the New Zealand Medical Council, he wasn't under their jurisdiction and it would be very difficult for them to have taken any kind of civil process, as it is for us today.

So I guess by the time that they heard about it it may have been not possible for them to have acted. I don't know, you need to ask them yourself, yeah.

CHAIR: At the risk of getting the same answer, do you know, and tell me if you don't, does the Medical Council, and indeed the Society that you're the President of, take steps unilaterally, do you have to wait for a complaint in order to investigate, or is reading it in a newspaper or seeing it on TV or hearing about it sufficient to trigger some sort of investigation?
I suppose I have to say I'm asking about what happened in the past.

A. I don't know if I can answer that question.

Q. We'll start with the College. Do you know of any cases where the College has heard of something that's so egregious that it takes steps without anybody even making a complaint?

A. In my time when I was active in the College, I can't recall that happening. But, you know, soft intelligence, if you like, then one I think, it may not have been in my time, but certainly of course practises where psychiatric treatments were used as punishment or inappropriate and unethical behaviour by psychiatrists were sometimes heard about by soft intelligence and then there would be a process of people trying to hunt down some hard evidence. So I think there was some proactive response. But --

Q. Or there could have been some?

A. There could be, yes, yeah. As there is for any kind of patient harm, you know, that one hears about in an informal way, yeah.

Q. Thank you.

QUESTIONING BY MR MOLLOY CONTINUED: I know you're not here today representing the College, but the College, I don't think, has a disciplinary function in its own right does it?

A. Not anymore.

Q. When did that cease, can you recall?

A. I think something to do with Australian medical kind of changes, so that the -- within the Australian context the disciplinary paths were taken away from all colleges and are done in a separate body, yeah, because it's a bilateral college that occurred here in New Zealand as well.

Q. Can you recall roughly when that was?

A. It was after I was President, so it might have been around the year 2000.

Q. Thank you. Dr Wilson, I've got no further questions for you. Ma'am, were there any questions?

CHAIR: I think I've asked mine but I'll ask my colleagues.

COMMISSIONER ALOFIVAE: Thank you, Dr Wilson, for your evidence and for the responses that you've given which have really basically answered most of my questions. Just a question please, we've heard the word "trauma", we've heard the word "trauma-informed approach" used often in the Commission and just wanting to take you back in your career, whether or not that was a concept that was practised or a principle that was very much to the fore when you were treating patients, or was it just naturally expected that it was something that happened?

A. I think our knowledge and understanding about trauma and looking at trauma-informed

care and approaches didn't really come into mental health services until the 2000s to be honest, yeah.

Q. So prior to that, what were the principles that were then being applied in caring for our psychiatric patients or people in care?

A. Well, one would hope that they would be the principles of compassion and caring and the appropriate application of evidence-based treatments, yeah.

Q. Thank you very much, Doctor.

CHAIR: And I'll leave you have now with Commissioner Gibson.

COMMISSIONER GIBSON: Thank you Dr Wilson. A few questions, first the role of Director of Mental Health, that's a statutory role, there's weight, there's mana with that role and there's a bit of independence, you give your advice perhaps more freely and frankly and independently than most non-statutory officials, would that be right?

A. Yeah, that is correct. But you still are a public servant and, you know, you know, I always used to say that it was a role that was like a coin, where one side you had the responsibility for the patients, particularly those under the Mental Health Act, but for those that were receiving mental health care in general, and you had to hold that kind of -- you were the steward and mandate, but on the other side you also had -- were responsible to Government, and, you know, you were a public servant in that sense.

Q. And you talked about your sympathy for merits of the claims and in fact that the weight of evidence, as you saw it from your clinical expertise perspective pointed towards the need for some kind of investigation?

A. Correct.

Q. And was there any weight, mana given to your role through the process? It didn't seem like much came out of that despite your position at that time.

A. Yes, it is frustrating, I can see that from your point of view. When looking at that health report that you just saw and that Mr Molloy put up, I thought it was interesting that I got ticked as the first person when in fact you saw that Ron Patterson was the manager of mental health at that time, and you know he's a lawyer, quite a well-known lawyer. And I know that he mostly wrote that report, and the advice was really to Government about what legal process should be used. But the fact that I was ticked was because the Ministry wished Government to take note of my advice.

So I think there was support for my mana and as I said, you know, it is a frustrating process to work through the legal policy and Government policy processes of these kind of litigations and investigative processes.

Q. You signed the affidavit in the McInroe case and it seemed like you said you had some small role in advising Crown Law and Health Legal and they advised you to sign the affidavit?

A. Yes, well I think they thought that, I mean I don't recall clearly, to be honest, and I think it's because my job was extremely big, and, you know, the embedding in of a new piece of legislation that had its own case law to be established, and I maybe had a number of section 95 inquiries running, and also there was a mental health inquiry in 1995 you might remember Judge Mason's inquiry, and the establishment of appropriate community mental health services.

So you know, this -- when I was involved in this Lake Alice litigation it seemed to be intermittent and that's why I think my role was small. But I do recall that they felt it would be useful for me to at least say that we -- it was difficult to find independent evidence from notes of staff at that time.

Q. I suppose I'm also wondering your mana and knowledge of the merits of these claims, perhaps it was somehow, rather than the process of the claims and you've given evidence on the process of the claim, perhaps the mana was co-opted to almost unbalance the need for an investigation?

A. Yes, that has occurred to me. But even if I had not signed the affidavit, I think that the strike-out claim would have still gone ahead, yeah.

Q. Another question; you talked about treatment as punishment in the past more so than currently. There's almost a concern that this still goes on to a lesser extent currently?

A. I think we have to be continually vigilant within mental health services and continually advocate for improved skill and competent staff in numbers. You'll probably be aware of the media around the use of seclusion currently and my current organisation is involved in a quality improvement programme that is focused on trying to get to zero seclusion, which I believe is possible, maybe it seems aspirational, but I think, you know, I do think that maybe in ten years time there will be an inquiry into the use of seclusion when it's appropriate.

Fortunately we have an Ombudsman that's looking at it very closely all of the time. But I think this is an area where you still have to be vigilant about when people are in vulnerable situations and where they're in positions of having treatment put upon them in a compulsory fashion, we do have good legislation, but we still have to be vigilant.

Q. Then that legislation, which is from 1992, was to some extent in response to catching up with international human rights debates, instruments, conventions. Do you think we're

contemporary enough with more recent human rights developments? I'm particularly thinking about the Convention on the Rights of People with Disabilities and how that applies to this area?

A. Within the Mental Health Act?

Q. Yes.

A. I think you need to ask the current Director of Mental Health that question. I know that they have recently updated the Mental Health Act, they went through quite a big process around improving it in terms of the Bill of Rights, human rights, international human rights, but I'm not on top of that, yeah, I'm sorry.

Q. I think it's now up to me to thank you Dr Wilson. I've been aware of your tremendous reputation over the years, you've done so much work in various areas and I know that the appreciation of many in the consumer movement as well. I know that this is, again, there's a lot of work coming to these things today and to share your experiences, your recollections from the past and your various roles is really appreciated, so thank you for your time.

A. Thank you.

CHAIR: Thank you very much indeed. Mr Heron, I'm sorry I didn't give you an opportunity to re-examine, but we're not following those sorts of processes here, unless you especially wanted to?

MR HERON: No thank you. I only wanted to wish the Commissioners and all those involved the very best of luck with what you have before you. It's a Herculean task, so best wishes from me and on behalf of Dr Wilson.

CHAIR: That's much appreciated, Mr Heron, I think we need all the luck and help, but witnesses like this do assist us enormously, so thank you very much. We'll take the lunch adjournment.

MR MOLLOY: Ma'am two points, firstly in response to Commissioner Gibson's last question, the current Director of Mental Health, Dr Crawshaw, has a provided a very fall statement in support of the Inquiry, it's not part of the hearing bundle but it is part of the record that you have.

CHAIR: Good, we'll read that with interest, thank you.

MR MOLLOY: The second is rather more mundane, our next witness is available at 2.30.

CHAIR: We might have a slightly longer lunch time than usual which is always good news. We'll take the break, thank you. **[Interjection from the public]**

Lunch adjournment from 12.54 pm to 2.35 pm

CHAIR: Yes, good afternoon.