# 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:** 24 June 2021

\_\_\_\_\_

### TRANSCRIPT OF PROCEEDINGS

## **INDEX**

ANDREW MORRIS JANE	
Questioning by Ms A Thomas	694
Questioning by Commissioners	705
PAUL ZENTVELD	
Questioning by Ms Joychild	707
Questioning by Commissioners	743
THOMAS JOHN FITZGERALD	
Questioning by Ms Feint	745
MALCOLM JAMES BURGESS	
Questioning by Ms Hughes QC	747
Questioning by Mr Finlayson-Davis	751

1	This is a moment in history, I don't think I thank you for the courage you brough
2	in bringing that to us. I don't think this is going to be forgotten lightly. I think it's a wake
3	up call for Aotearoa New Zealand in a big way. You've done that so well. I think you've
4	landed a few big fish in your time.

- 5 A. We catch fish all the time.
- 6 **Q.** You're sort of reeling in a few as we speak I think.
- A. I don't want to be a politician or a State official, I want to go back fishing and get a life.
- I hope we're in the process of catching and you catch a few more fish in the meantime and reel them in. Thanks, Paul, so much for everything you've done over such a long period of time. Kia ora. [Standing ovation and applause]
- 11 **CHAIR:** A fine note to end on I think. We'll take a break before our next witness. Thank you all.

## Adjournment from 2.53 pm to 3.09 pm

- 13 **CHAIR:** Good afternoon Ms Feint.
- MS FEINT: Tena koe Madam Chair. We're going to have the Police evidence now, but before
  we start we have Detective Superintendent Thomas Fitzgerald who's going to make a
  statement on behalf of New Zealand Police to acknowledge that Police got some things
  wrong. So he has a prepared statement that's he's going to read.

#### THOMAS JOHN FITZGERALD

- 19 **CHAIR:** If I affirm you now it's done and dusted and we can carry that over tomorrow. So we'll
  20 get that out of the way shall we. Thank you for coming Detective Superintendent. Do you
  21 solemnly, sincerely, truly declare and affirm that the evidence you give to the Commission
  22 will be the truth, the whole truth and nothing but the truth?
- 23 A. I do.

18

- 24 **Q.** Thank you.
- QUESTIONING BY MS FEINT: Tēnā koe Detective Superintendent. Can you please tell everyone your name and rank please?
- 27 A. Thomas John Fitzgerald, I'm a Detective Superintendent in the New Zealand Police.
- 28 **Q.** What's your role in the New Zealand Police?
- 29 A. I'm the Director of Criminal Investigations.
- Thank you very much. So you have a statement prepared in which the New Zealand Police wishes to acknowledge that as an institution there have been some failings in regard to the
- Lake Alice investigation. Can I ask you please to read that to the Commission.
- A. The New Zealand Police accept that in 2002 to 2010 period Police did not accord sufficient priority and resources to the investigation of allegations of criminal offending at the Child

1		and Adolescent Unit at Lake Alice Psychiatric Hospital. This resulted in unacceptable
2		delays in the investigation and meant that not all allegations were thoroughly investigated.
3		The Police wish to apologise to the Lake Alice survivors for these failings. The Police are
4		committed to assessing policy and how national investigations are resourced and are
5		committed to ensuring that this not happen again.
6		The New Zealand Police acknowledge with the benefit of hindsight that the scope
7		of the investigation between 1977 to 2010 should have included the use of Paraldehyde as
8		punishment.
9	Q.	And then there's an agreed statement of facts in relation to the investigation period between
10		2002 and 2006 and that's the period to which Lawrence Reid Detective, I don't know his
11		rank, Detective Lawrence Reid's investigation related?
12	A.	Yeah. In relation to the investigation period 2002 to 2006, in 2002 Police received from
13		Grant Cameron 34 statements from survivors who wanted the Police to investigate their
14		complaints of abuse. It appears 14 or 15 of those statements may have been lost. It is
15		unknown when these 14 or 15 statements were lost but the schedule prepared by Mr Reid in
16		2005 only contains 20 statements. It is unknown whether any investigative steps were
17		taken in respect of these complaints but it appears unlikely. Those statements have since
18		been forwarded to Police in 2006.
19	Q.	Thank you.
20	A.	A 2018 review of the 20 statements held by Mr Reid revealed 11 of the 20 contained
21		allegations of sexual and physical assaults. No file was entered in LES, the Police
22		document locator database, at the time. As a result, a number of file documents were not
23		saved and can no longer be located.
24		A 2018 review of the material available from 2003 to 2006 found the following
25		investigative steps undertaken were:
26		An opinion sought from Crown Law in respect of one complainant, Mr Halo;
27		Inquiries by Mr Reid to establish whether staff members were still alive;
28		Interviews of Mr Halo and Ms Natusch by Inspector Taare;
29		Alleged offending and named suspects schedule was prepared based on the 20
30		statements held;
31		Basic Police checks on named staff.
32		Correspondence via letter with Victor Boyd from Citizens Commission of Human
33		Rights New Zealand;
34		Correspondence via letter with Director-General of Health Doctor Karen Poutasi;

1		Correspondence via letter with CLAS;
2		Discussions with Health and Disability Commissioner Denise Brett.
3		In 2003 a case law memorandum recorded the Detective Superintendent's view
4		that he did not consider at that stage that the investigation was warranted, given the
5		historical nature of the allegations, and the context of the conduct occurring in the
6		psychiatric facility where ECT was administered.
7		In 2004 Police received a legal opinion in respect of the Hake Halo complaint
8		from Nicola Crutchley, Deputy Solicitor-General. Paragraph 48 of that opinion advises
9		Police to conduct further inquiries in order to establish whether there should be a detailed
10		investigation. Paragraphs 49 to 55 then detail a number of suggested inquiries.
11		Those other investigative steps suggested by Crown Law at paragraphs 49 to 55 of
12		the opinion were not undertaken until 2006.
13		Police did not actively progress the complaints they had until 2006 as Mr Reid
14		believed that the totality of the Crown Law opinion, together with the fact an unnamed
15		sexual abuse suspect was deceased, indicated a successful prosecution was unlikely.
16		Police acknowledge, with the benefit of hindsight, the scope of the investigation
17		was too narrow.
18	Q.	Thank you very much Detective Superintendent. So that statement of facts takes us up to
19		the period 2006 and then we're going to move to Malcolm Burgess' and my friend Ms
20		Hughes is leading his evidence.
21	CHA	IR: Very well, thank you.
22	MS I	<b>FEINT:</b> We'll change places and you can step down now.
23	CHA	IR: Yes, you may step down Detective Superintendent.
24		Good afternoon Ms Hughes.
25	MS I	HUGHES: Good afternoon ma'am.
26	CHA	IR: Welcome to the Commission.
27	MS I	<b>HUGHES:</b> Thank you. I have been asked by Counsel Assisting to read into the record the
28		statement of Retired Superintendent Reid. Does the Chair require that to occur, or are you
29		happy the statement exists on the record in any event?
30	CHA	<b>IR:</b> This is not something I've been alerted to do so I need to hear from our counsel. What's
31		the situation Ms Finlayson-Davis?
32	MS I	<b>FINLAYSON-DAVIS:</b> I think there's been a misunderstanding. It was the statement that's
33		just been read out from Detective Sergeant Fitzgerald.
34	CHA	<b>IR:</b> Yes, that's right, and the other statement is taken as read but it's not going to be called.