THE OAKLEY INQUIRY IN RETROSPECT AND ITS AFTERMATH

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For the most part, rather than comment directly on Dr Jensen's paper, which I understand Dr Maule intends to do in some detail, I propose to attempt to provide in a series of necessarily brief comments some further dimensions to the overall topic. These comments are, I acknowledge, so unrelated as to risk incoherence - a series of tangential trots past the subject matter, which limitations of space will mercifully prevent me from attempting to synthesise.

1. THE BACKGROUND TO THE 1982 OAKLEY INQUIRY

The Committee of Inquiry into Procedures at Oakley Hospital and Related Matters, chaired by R G Gallen, Q.C. (as he then was) arose essentially out of the death at Oakley on the 22nd February 1982 of Michael Percy Watene, following upon the administration of Electroconvulsive Therapy (ECT); a subsequent Coroner's Inquest which concluded that the death of Mr Watene was due to failure to adequately observe him following ECT; and subsequent Affidavits making allegations of misconduct relating to Mr Watene's treatment while at Oakley which were brought to the attention of the Auckland Hospital Board. The Gallen Committee commenced its hearings on the 10th August 1982, and concluded these on the 12th November 1982, sitting for a total of 34 days. Its report was released on the 9th of February 1983.

As most participants in this Seminar will know, the Gallen Committee was by no means the first inquiry into conditions at Oakley Hospital. There had been a previous Royal Commission of Inquiry (the Hutchinson Commission) in 1971, and the Gallen Committee comments that its inquiry was the Fourteenth undertaken in respect of Oakley/Carrington since 1971.

In its Report, the Gallen Committee expressed concern that a substantial number of deficiencies to which attention had been drawn in the Hutchinson Report remained unremedied. In view of the chronic failure over the years by the Auckland Hospital Board and the Oakley Administration to remedy criticisms and implement recommendations, particularly those of the Hutchinson Committee, perhaps the most acute question at the present time is the extent to which the recommendations of the Gallen Committee have been implemented. That, however, is a Seminar paper in itself, and in this commentary I am unable to undertake an overall analysis of that issue.

2. THE CONDUCT OF THE 1982 OAKLEY INQUIRY

I do not want this occasion to pass without taking the opportunity to record my admiration for the way in which the Gallen Committee went about its difficult, indeed trying, task of conducting the hearings. Persons appearing before it varied widely: former psychiatric patients with grievances real or imagined going back a decade or more; Maori activists with a strong and healthy suspicion of a Pakeha inquiry; Trade Unions; Public interest groups; directly interested persons such as nursing and medical staff; and Counsel of wide-ranging seniority.

I would like to be able to paint for you a word picture of the way the hearings proceeded, but the task is necessarily beyond me. This is in part I must confess because, although representing the Auckland Council for Civil Liberties, which was (ultimately) a party to the Inquiry, I was not present throughout the whole of the hearings. Like many lengthy inquiries, the Oakley Inquiry eventually took on the attendance patterns of a Wagnerian opera. While the performers - the Committee and those with their particular scene to play - were perforce rooted centre stage, Counsel and spectators were able to a large extent to choose which acts and even scenes of the performance to attend, and which to use for the pursuit of creature comforts.

My intermittent absences notwithstanding, I believe that no one will contradict me if I say that the proceedings of the Gallen

Committee were conspicuous for their fairness, unvarying courtesy, inexhaustible patience, and (most striking) palpable sensitivity to Maori values and indeed to all minority viewpoints. The "little person" must have emerged as satisfied of a fair hearing of his or her specific concern as any of the major parties of the Inquiry. It may be noted in passing that the 1982 Oakley Inquiry is one of the few major controversial inquiries in recent years not to have found its procedures or its ultimate findings challenged by way of High Court review. All of this was in a great measure due to the personal style of the Chairman, (now) Mr Justice Gallen, who, by the simple expedient of putting other people's concerns ahead of personal prestige and self-image, succeeded in conducting a model inquiry.

3. EVENTS SUBSEQUENT TO THE REPORT OF THE GALLEN COMMITTEE

Even a model inquiry needs to be translated into action, for its existence to be truly justified. Unfortunately, as the history of Oakley/Carrington so graphically illustrates, the expertise and effort which infuses the inquiry process does not necessarily flow over to the further process of implementing recommended change.

No doubt with these matters in mind, the Gallen Committee recommended (Section 11.3) that a separate Board of Control be set up, to be responsible for the new Carrington/Oakley complex which it proposed and to oversee the changes which it proposed. The Gallen Committee recommended an appointed, not an elected Board which would assume responsibility for planning forensic psychiatric services through the whole Auckland region.

To oversee the implementation of such of the Gallen Committee's recommendations as it proposed to implement, the Auckland Hospital Board appointed an eight-person Special Committee to Monitor Progress at Oakley Hospital (the Special Committee). The Special Committee included three Auckland Hospital Board members and the Director of Mental Health, Dr James. Senior Hospital Board Executives also participated, although not strictly members. The Special Committee did not include a representative

of the Public Service Association or any other of the many critics of Oakley and the Auckland Hospital Board before the Gallen Committee.

The Special Committee was told at the start that its role was limited to monitoring the implementation of certain recommendations of the Gallen Committee and did not extend to "planning functions". It was to report to the Hospital Board. Statements to the media were to be made by the Chairman of the Special Committee only.

At the outset, the Special Committee was presented with an advance agenda by way of a Status Report on Oakley Hospital prepared by Hospital Board Officials. To judge by its Minutes, to which I have had access, the Special Committee's functions seem to have been mainly limited to monitoring the Status Report itself, which loomed large in its deliberations. The Special Committee had its first meeting on the 26th May 1983 and by the 17th November 1983 was seriously considering its own dissolution. The Special Committee seems to have met with increasing infrequency thereafter, and ultimately on the 30th May 1985 resolved to disband. It had earlier been advised by Dr Honeyman that so long as it continued in existence, Carrington and Oakley Hospitals would not amalgamate "because key staff would see no reason to accept the monitoring role of (the)Committee superimposed on the normal professional clinical and administrative monitors already in existence" (minutes of 17th November 1983).

So far as I have been able to ascertain, the Special Committee was not advised of the Public Service Association's ban on the admission of "Oakley-type" patients imposed on the 15th March 1985, which I will refer to shortly. The existence of the ban was in my view clearly relevant to the need to continue monitoring Oakley Hospital, and also affected the implementation of the Report of the Working Party on Psychiatric Treatment and Security in Auckland, to which I refer shortly. It is therefore surprising, to say the least, that the Special Committee was permitted to disband in ignorance of the Public Service Association's ban, and without a chance to consider its implications.

In my opinion, the Special Committee was never permitted to function as the Gallen Committee had intended. The Gallen Committee had envisaged a planning role for its proposed "Board of Control". The Special Committee sank largely without trace; and the dissatisfaction of its minority members is apparent from the minutes themselves. The Gallen Committee Board of Control was to have been responsible for the combined Carrington/Oakley complex. The Special Committee set up by the Hospital Board was disbanded before the recommended amalgamation of Oakley and Carrington eventuated. The Special Committee was in fact told that its dissolution was necessary for the amalagamation to be achieved; but despite that complete amalgamation has to date not taken place. Apparently, old attitudes are hard to kill off.

4. THE REPORT OF THE WORKING PARTY ON PSYCHIATRIC TREATMENT AND SECURITY IN AUCKLAND (THE WORKING PARTY)

On 12th September 1984, a Working Party was formed, to report to the Ministers of Health and Justice on the need in Auckland for secure facilities for psychiatric patients, including prisoners and other offenders, and to make recommendations on the action required to meet the need. The Working Party comprised representatives of the Auckland Hospital Board and the Departments of Justice and Health.

The Working Party presented its 29 page Report in November 1984. Considerations of space prevent a detailed treatment of the Report and its recommendations. I note especially the following. First, having stated that the majority of prisoners in need of psychiatric care must receive it in prison, the Working Party recommended that the Department of Justice establish a special psychiatric prison, with its own Prison Superintendent, initially to be located in what is presently Ward M3 Oakley Hospital. This proposal stands directly opposed to the Report of the Gallen Committee (Section 15), although connoisseurs of irony should note that it is along the general lines of what had been advocated before the Gallen Committee by Dr Pat Savage, the former Medical Superintendent at Oakley. Secondly, the Working

Party recommended that Ward M7 of Oakley be used by the Auckland Hospital Board as a "small secure unit for mentally impaired/ inadequate patients with anti-social tendencies" - a so-called "Structured Living Environment". This recommendation ran counter to the Gallen Committee's proposal (Section 11.6) that Ward M7 remain as an open ward. Thirdly, the Working Party recommended that the Auckland Hospital Board take immediate steps to improve the accommodation of the acute wards at Carrington and to provide a secure area for the assessment and management of severely disturbed patients. Finally, the Working Party recommended that Lake Alice should provide the only maximum security psychiatric hospital facility in the country.

Following on the Working Party Report, Cabinet agreed in principle, subject to necessary Town Planning approval, to the first recommendation and gave the nod to long term planning towards a replacement of the M3 Ward with a purpose built special prison. Cabinet also agreed to the implementation by the Auckland Hospital Board of the second and third recommendations referred to above, namely, those relating to the "Structured Living Environment" and the improvement of the acute wards at Carrington Hospital.

5. THE PUBLIC SERVICE ASSOCIATION'S BAN

The Public Service Association (PSA) is the trade union representing both psychiatric nurses and prison officers. The PSA in its submissions to the Working Party had not opposed the construction of a secure facility for psychiatrically disturbed prisoners, and had indeed advocated that the facility be located on the existing Oakley site, and in the short term, that the existing Oakley buildings be utilised for the secure facility.

That notwithstanding, the PSA in March 1985 subsequently expressed its "grave misgivings" about the key recommendations of the Working Party. Expressing concern about Auckland Hospital Board decisions which it alleged involved an unduly hasty implementation of the Working Party's recommendations, the PSA implemented what it described in a letter to the Auckland Hospital Board as a

"series of bans designed to support the Association's position". The key ban, a ban on the admission of so-called "Oakley-type" patients, involved a refusal by PSA members at Carrington and Kingseat Hospitals:

> "....to admit as a patient, any person with a documented history of unprovoked violence unless such a person is deemed to present no real threat of injury to staff or patients following assessment by nursing and medical staff from the Ward within the hospital to which the patient will be admitted ....(or).....to admit any patient under the Criminal Justice Act, whether committed or remanded, and any patients under Sections 42 and 43 of the Mental Health Act."

The PSA claims to have acted out of concern both for its members at Carrington and Kingseat who, while critically short-staffed were being presented with increasing numbers of violent men with a seriously disruptive influence, and for the majority of psychiatric patients in those hospitals.

While that may be so, one effect of the PSA ban has been to require that Oakley be retained as a Psychiatric Hospital to acccommodate so-called "Oakley-type" patients. Effectively, this seems to have blocked the implementation of the Working Party's recommendations concerning Ward M7 at Oakley. The ban also has the potential to block, if it has not in fact already blocked, the implementation of the Working Party's recommendations concerning Ward M3.

As practising lawyers can confirm, the PSA ban has made transfer from one Psychiatric Hospital to another within the Auckland area of patients subject to the Criminal Justice Act 1985 or to sections 42 and 43 of the Mental Health Act 1969 a practical impossibility. Patients who would otherwise be transferred from a medium security environment into Carrington or Kingseat Hospitals are either held at Oakley, or discharged direct into the community. In addition, so-called "Oakley-type" patients from within the Auckland area presently at Lake Alice Hospital, with its maximum security unit, who might otherwise merit transfer to Auckland Psychiatric Hospitals with a view to ultimate discharge, are being forced by the current

situation in the Auckland area to remain at Lake Alice.

In its letter to the Auckland Hospital Board announcing its ban, the PSA concluded by stating that it was willing to enter into "negotiations/discussions on the issue". No such negotiations or discussions seem to have taken place; and the Auckland Hospital Board and the Justice Department (who were to have taken over Ward M3 as a "special prison", as recommended by their Working Party) seem to have accepted the PSA ban without demur.

I do not want to become involved in determining the rights and wrongs of the PSA's original action in imposing its ban. However, the ban has now been in force for almost 18 months, and I believe that from the point of view of psychiatric patients overall, the present situation is far from satisfactory. The PSA ban represents a labelling of some male (only) psychiatric patients as "Oakley-type" patients, not on the basis of any individual clinical decision as to their current psychiatric state, but on the basis of past behaviour or, even more arbitrary, the legal category of their admission into a Psychiatric Hospital. Although in theory the PSA ban contemplated its relaxation in certain circumstances, in practice, in my experience, Health Authorities simply point to the PSA ban and shrug resignedly.

Moreover, the ban was introduced when the Criminal Justice Act 1954 was in force. Without going into detail as to the changes made by Criminal Justice Act 1985, it is obvious that the legal position has changed markedly. For that reason alone, the PSA ban requires reconsideration.

I believe that now, 18 months after the imposition of the PSA ban, it is time for all parties effected to begin negotiations with a view to its reassessment and to devising some interim solutions to pressing problems which are clearly to the detriment of those in whose interests they should be working, namely, the psychiatric patients. Any such negotiations may not be completely successful in resolving the complex and difficult problems which present themselves but they are plainly long overdue.

6. CONCLUSIONS

In his paper, Dr. Jensen states that moves "began immediately" to implement the recommendations of the Gallen Committee. Certainly, it would appear that a large number of the more detailed recommendations were promptly and vigorously acted upon. However, the important recommendation concerning the Board of Control for Carrington/Oakley, to which I have already referred, was not implemented by the Auckland Hospital Board. Owing to the short unhappy life of the Auckland Hospital Board's Special Committee, there is at present no mechanism independent of the Hospital Board to monitor, on a continuing basis, conditions at Carrington and Oakley. Given the sad and chronic prelude to the setting up of the Gallen Committee, I believe this to be a most unsatisfactory situation. It gives further emphasis to Dr. Jensen's expression of concern that, if further changes are not made, another Oakley Inquiry could eventuate.

As detailed above, other fundamental policy recommendations of the Gallen Committee in the field of forensic psychiatry were also ultimately ignored. While I do not for a moment suggest that the recommendations of the Gallen Committee are holy writ, nevertheless, the overall position seems to be that while Oakley's problems seem to have been largely solved, the problems of certain categories of psychiatric patients or psychiatrically disturbed prisoners remain in limbo, with neither the relevant recommendations of the Gallen Committee being implemented, nor any other short-term proposals.

In the area of recommendations of legislative change, key recommendations of the Gallen Committee advocating automatic review of detention of psychiatric patients by an independent Board (Section 16) have not been acted upon. Nor have criticisms by the Committee (Section 17.17) of the adequacy of present safeguards in the Mental Health Act 1969 in respect of guardianship and representation for persons detailed in psychiatric hospitals. While I accept that major review of mental health Legislation cannot be brought about overnight, it is unsatisfactory that, in these areas too, three and a half years after the Gallen Committee recommended change, a state of limbo governs.