

1 **TUESDAY 19 SEPTEMBER 2000**
2 **THE HEARING RESUMED AT 10.00 AM**

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4 CHAIR: Before we start with the submissions, I deal with the issue
5 concerning the suppression of the laboratory in Whangarei, which I
6 neglected to do at the end of the day. I see that there has been further
7 publicity in the New Zealand Herald this morning about a laboratory in
8 Whangarei and suggestions of misreading of smears. It seems to me that in
9 respect of that narrow question that Mr Grieve asked in cross examination
10 when he asked whether or not there was a concern about a laboratory in
11 Whangarei, that there is no reason now why that cannot be made public.
12 Now because the issue wasn't contested, I didn't make a formal ruling, my
13 ruling appears in the transcript and also I note, and I wasn't aware of this
14 before, I hadn't picked it up from the transcript, the transcript has been
15 wrongly recorded in the sense that whoever typed it out deleted the
16 reference to the word "Whangarei" and really it should have been included
17 in the transcript but because of the suppression order, therefore could not
18 beyond the hearing room. So I think we're all agreed that the reference was
19 to a laboratory in Whangarei and on that basis, I lift all the coverage of the
20 suppression order that I made, and therefore the media are free to publish
21 that exchange in it's entirety. Now I'm aware that in terms of the transcript
22 that went out on the website as well, that will have the locality deleted, so I
23 suggest everyone see Madam Registrar at the close of today and we can get
24 the transcript amended to have the reference to Whangarei included in it.
25 Next point I would like to raise and this is something really from the New
26 Zealand Herald as well, I don't know if there is anyone here from the New
27 Zealand Herald, but I see in the Herald there is a reference to my saying
28 yesterday that the Official Information Act could be used to obtain
29 information and it is then said in the Herald that the Herald has requested a
30 report under the Act but the Ministry had turned it down on the ground it

1 could prejudice maintenances of law because the inquiry had ruled the
2 information should not be made public. I think it is important to be aware of
3 what information has been suppressed and what hasn't. There was a
4 statistical report of laboratories which showed their reporting rates as at 94
5 and that report came out in early 97, certainly came out after Dr Bottrill had
6 retired. I have suppressed the identities of the laboratories in that report
7 because it seemed at this time, what the position was in 1994 was not
8 relevant to the inquiry, particularly in terms of the evidence we had heard
9 about the value of that study. However, in terms of the Du Rose evidence
10 which sets out the re-reading exercise done by Health Funding Authority for
11 the purposes of this inquiry where the performance of other laboratories was
12 looked at, it was that evidence that I was referring to yesterday when I said
13 to Ms Bunkle that she should use the Official Information Act if she wanted
14 to access to that information. The inquiry has never had full details of the
15 identities of the laboratories that were investigated in the Du Rose study.
16 And the inquiry has only received the information and in anonymised form
17 and therefore, it is beyond the powers of the inquiry to make any rulings
18 whatsoever as to whether or not the material in its original form should be
19 made available to other persons. It would only be if that evidence or if that
20 information were received in evidence by that inquiry then the inquiry
21 would then have powers to make suppression orders or not as the case may
22 be about it. So I want to make that clear to both the New Zealand Herald
23 and to the Ministry because I wouldn't like to see access to information
24 being denied on the grounds the inquiry had made rulings, which in fact it
25 has not done. Now on that basis, yes Mr Kirton?

26 MR KIRTON: Madam Chair, a point of clarification in that regard. In
27 your view, do you see no impediment from this inquiry over the release of
28 that information, it's a simple matter of an applicant making application to
29 the Ministry and the Ministry considering that application on solely on its
30 merits as opposed to impediment by way of this inquiry in terms of the

1 justice issues you just referred to.

2 CHAIR: Yes, in terms of the Du Rose study, it's getting access to the
3 identities of the laboratories has nothing to do with this inquiry. It may be
4 the Ministry wishes to use the grounds available to it under the Official
5 Information Act to withhold in the information but certainly, the release of
6 the information will not prejudice this inquiry.

7 MR KIRTON: Thank you.

8 CHAIR: Now I understand that counsel wish to see the Committee of
9 Inquiry in chambers to discuss process matters for the remainder of the
10 session and in that case, I would ask the hearing room to be cleared so that
11 we can all meet in chambers here. That includes the media.

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HEARING IN CHAMBERS

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(PP. C/108/ - PP.C/124)