


**Kathy Shanaghan**

**From:** Kevin Atkinson [kevin@ims.sales.co.nz]

**Sent:** Friday, 2 November 2007 16:03

**To:** Chris Clarke

**Subject:** Meetings with Management

This is the Exhibit marked "A",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at *HASTINGS*  
this *3rd* day of September 2008  
before me:  
 A Solicitor of the High Court of  
New Zealand

Chris - Further to my request to meet with yourself and your three key direct reports (Peter, Win, Warick) earlier today you agreed that could occur today with Win and Monday for Warick and Peter. Subsequently you have discussed this arrangement with Penny Andrew who in turn has discussed the meeting with Michael Wigley. I am extremely unhappy that Penny would contact Michael without discussing the issue with SLW, as this was the agreed point of communication to the review panel. .

You have just phoned to advise me that as a result Penny Andrew has advised you that she has recommend to you that it would be unwise for those meetings to occur as this would compromise the MOH review.

I want to express to you clearly that I am most unhappy at this situation; i.e. as Board Chair I am unable to obtain information that is of significant importance to the Board and its meeting with the review panel next week. I have advised you of the need to have this meeting since the Board meet with the Review Panel on the 7th September 2007.

As I said during my conversation with you, I regard management's unwillingness to support this meeting as a serious matter that has a major impact on the Board CEO relationship. I intend seek the Board's advice on how they wish this situation to be progressed.

Kevin

2/11/2007

This is the Exhibit marked "B", referred to in the annexed affidavit of CHRISTOPHER EDWARD CLARKE, sworn at *HASTINGS* this *3rd* day of September 2008 before me:  
A Solicitor of the High Court of New Zealand



**HAWKE'S BAY**  
District Health Board

6<sup>th</sup> November 2007

HAWKES BAY DISTRICT  
HEALTH BOARD  
RECEIVED

06 OCT 2007

CHIEF EXECUTIVES  
OFFICE

Chris Clarke  
CEO  
Hawke's Bay District Health Board  
Private Bag 9014  
HASTINGS

Dear Chris

Further to our discussion and my email of Friday 2nd November I advise I have now discussed with Board members what appears to be a serious breach of the formal process which the Board had laid down in relation to contact with the MOH Review Panel. You will recall that at a meeting in your office on 20 August 2007 it was agreed by you that all communications with the Review Panel would be channelled through one source. That was endorsed at subsequent meetings involving members of the Board on 5 October and 8 October 2007. During the discussion I had with you last Friday you confirmed that you were aware of the process that had been agreed.

The purpose of the process laid down was to ensure that Hawkes Bay District Health Board as an entity had a properly controlled and co-ordinated interface for all information and involvements with the Review Committee.

I seek from you an urgent explanation in writing as to the full circumstances which led to Penny Andrew contacting Michael Wigley. In particular please report on:

- the steps you took to ensure that all staff were made aware of the agreed formal process for contact with the MOH Review Panel
- what instructions if any were given to Penny Andrew to contact Michael Wigley
- the circumstances in which Penny Andrew reported to you following her discussion with Michael Wigley
- any subsequent discussion or contact you have had with Penny Andrew regarding this matter

In addition to your written explanation please provide copies of any records relating to what occurred whether that be by way of file note, diary entry, memo, email or whatever.

You should be aware that depending on the content of your explanation a disciplinary process may be commenced. In that regard please carefully consider your response but provide it to me as soon as possible. I require you to treat this matter as a priority. Accordingly, I would expect your written response to be sent to me by no later than 4pm on Thursday 8 November. Please treat this matter on a confidential basis and

limit any discussion with others on this matter to those who you consider strictly need to be contacted to ensure a full explanation is provided. Naturally, please ensure there is no further apparent breach of the formal agreed process as regards contact with the MOH Review Panel.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Kevin Atkinson', written over a horizontal line.

Kevin Atkinson  
Board Chair

# QUIGG PARTNERS

Level 7, The Bayleys Building, 28 Brandon Street, PO Box 3035, Wellington,  
Telephone 64 4 472 7471, Fax 64 4 472 7871

BARRISTERS & SOLICITORS

This is the Exhibit marked "C",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at *HASTINGS*  
this *3rd* day of September 2008  
before me:

A Solicitor of the High Court of  
New Zealand

Refer to: Michael Quigg  
Direct Phone: +64 4 474 0766  
michaelquigg@quiggpartners.com

20 November 2007

Buddle Findlay  
Lawyers  
PO Box 2694  
WELLINGTON

**Private and Confidential**  
**By Email –**  
**peter.chemis@buddlefindlay.com**

**Attention: Peter Chemis**

Dear Peter

## **HAWKES BAY DISTRICT HEALTH BOARD - CHRIS CLARKE**

We have received instructions from the Hawkes Bay District Health Board as regards the issues raised with its Chief Executive, Mr Chris Clarke in a letter from the Board Chair, Mr Kevin Atkinson that is dated 6 November 2007.

The letter to Mr Clarke of 6 November sought a response from him by 4pm on Thursday 8 November. Subsequently Mr Clarke sought extensions of time for his response. It is understood he now believes that your letter of 12 November constitutes a response on his behalf. It appears he is mistaken in relation to this particular matter which has potential disciplinary consequences. It was stated in the letter from Mr Atkinson to Mr Clarke dated 6 November "*you should be aware that depending on the content of your explanation a disciplinary process may be commenced*".

In your letter to Mr Atkinson of 12 November that addresses various matters under the heading "*Your letter of 6 November 2007*" you expressly state:

*"For the avoidance of doubt, we note that at this time, we have not determined whether we should assist Mr Clarke in relation to the disciplinary process alluded to in your letter of 6 November 2007".*

You repeat similar sentiments on the third page of that letter.

It would be appreciated if you would now advise by 5pm on Wednesday 21 November whether you are or are not acting for Mr Clarke in relation to this potential disciplinary process. If we do not hear from you by that time we will deal directly with Mr Clarke on the matter. If you are to act on his behalf then could you please provide within the same timeframe Mr Clarke's written explanation to the specific issues identified in the letter to him of 6 November 2007.

We look forward to receiving your advice.

Yours sincerely

**QUIGG PARTNERS**

**Michael Quigg**

**Partner**

MQ121893

# QUIGG PARTNERS

Level 7, The Bayleys Building, 28 Brandon Street, PO Box 3035, Wellington 614  
Telephone 64 4 472 7471, Fax 64 4 472 7871

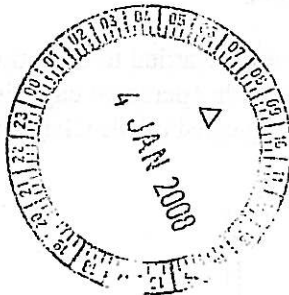
BARRISTERS & SOLICITORS

This is the Exhibit marked "D",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at HASTINGS  
this 3rd day of September 2008  
Before me:  
A Solicitor of the High Court of

Refer to: Michael Quigg  
Direct Phone: +64 4 474 0766  
michaelquigg@quiggpartners.com

21 December 2007

Buddle Findlay  
Lawyers  
P O Box 2694  
WELLINGTON



Attention: Peter Chemis

Dear Peter

## HAWKES BAY DISTRICT HEALTH BOARD - CHRIS CLARKE

Further to our letter to you dated 20 November we acknowledge receipt of the letters response from you dated 20 November (two) and 23 November.

In your above correspondence you have raised a number of matters that appear to have led to some confusion. Part of that confusion appears to arise from the fact that it is not clear on whose behalf you are corresponding. Perhaps that is the first matter that needs to be clarified.

In our letter to you dated 20 November we sought clarification from you as to whether or not you were acting for Mr Clarke in relation to the potential disciplinary process. In your first letter to us dated 20 November you stated that you had made contact with Mr Clarke and you stated that Mr Clarke had advised you that he had not received a clear response from the Chairman Mr Atkinson as regards his (Mr Clarke's legal representation). In a second letter to us dated 20 November you referred to expecting to receive a letter from Sainsbury Logan and Williams and in that regard you stated:

*'When a response is received, Buddle Findlay and Mr Clarke will also have to decide whether Buddle Findlay should continue acting for all senior staff, or whether Mr Clarke should seek alternative counsel'*

We took it from that sentence that at least at that time, you accepted that you were acting for Mr Clarke.

In your last letter to us dated 23 November you raise no issues as regards your acting for Mr Clarke in relation to the possible disciplinary process and address the matter substantively by indicating that unless you hear from us shortly, you will assume that Mr Atkinson/the Board is comfortable with the parties accepting that no disciplinary action was intended and that they continue their discussions around their relationship moving forward. On this basis we assume that Buddle Findlay is acting for Mr Clarke in his personal capacity and accordingly is responding to requests for responses from him that depending on their content could lead to possible disciplinary action.

As far as the possible disciplinary action is concerned, our client has never stated that disciplinary action had commenced. This matter was initiated by a letter from the Chair to your client dated 6 November in which he stated:

*'You should be aware that depending on the content of your explanation a disciplinary process may be commenced'*

That remains the position and nothing you have forwarded to us in the interim alters that fact. As it is clear you are now acting for Mr Clarke in his personal capacity could you please forward to us in the New Year the responses requested of Mr Clarke from the Chairman dated 6 November.

Yours sincerely  
**QUIGG PARTNERS**

**Michael Quigg**  
Partner  
MQ122075

This is the Exhibit marked "E",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at *HASTINGS*  
this *3rd* day of September 2008  
before me:

A Solicitor of the High Court of  
New Zealand

Refer to: Michael Quigg  
Direct Phone: +64 4 474 0766  
michaelquigg@quiggpartners.com

1 February 2008

Buddle Findlay  
Lawyers  
P O Box 2694  
WELLINGTON

Attention: Peter Chemis  
By Email: peter.chemis@buddlefindlay.com

Dear Peter

**HAWKES BAY DISTRICT HEALTH BOARD - CHRIS CLARKE**

Further to our letter to you dated 21 December last, it would appear that we have not received any response from you in relation to that letter.

For the avoidance of doubt we confirm as stated in the letter from the Board Chair to your client dated 6 November, the Board is seeking an explanation from your client in writing as to the full circumstances that led to Penny Andrew contacting Michael Wigley. In particular, your client has been asked to report on the 4 separate matters identified in the third paragraph of that letter.

In addition to the above, your client has been asked to provide copies of any records relating to what occurred whether it be by way of file note, diary entry, memo, email or whatever. In that respect, it is now understood that Penny Andrew may well have communicated with your client by email on the afternoon of 7 November 2007 and if this is so, clearly copies of any such email exchange is included within our client's original request.

Now that almost 3 months have elapsed since this original request was made, it would be appreciated if you would immediately respond and advise when this information is likely to be provided. As noted in the original letter from Mr Atkinson to Mr Clarke dated 6 November, depending on the outcome of his explanation, a disciplinary process may be commenced. If your client fails to respond to this reasonable request within the next 7 days, then his failure to do so will be considered by the Board and it will determine whether in all the circumstances it is appropriate to take disciplinary action in that regard. We trust this is not necessary and accordingly look forward to hearing from you as a matter of urgency.

Yours sincerely  
**QUIGG PARTNERS**

**Michael Quigg**  
Partner  
MQ122719



This is the Exhibit marked "F",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at *HAETIAES*  
this *3rd* day of September 2008  
before me:  
*A Solicitor of the High Court of*  
New Zealand

**FILE NOTE : DISCUSSIONS WITH KEVIN 6 NOV 2007**

This morning as agreed Penny Andrew and I met in my office at 8am to meet Kevin Atkinson and Magnus MacFarlane to discuss the issues contained in Kevin's email to me of Friday 2 November. Kevin rang at 8.40 am to apologise that Magnus had rung the night before and was unable to attend and Kevin had forgotten to contact me. I explained that I was waiting for the meeting so that I could respond to Kevin's email of 2 Nov re Penny's contact with Michael Wigley.

Kevin asked me not to respond to the email as he realized that some of the comments were a bit unwise and that instead he was writing to me and that I should respond to that letter. A letter arrived later that day hand delivered by Kevin which indicated among other issues that disciplinary action may be initiated. The Chairman popped in to see me around 5pm and explained that the letter had not been prepared by SLW but by Michael Quigg of Wellington. The Chairman also explained that he had briefed the board on the issues. I advised him that I had sought independent legal advice and we agreed that I respond by 4pm the following Monday. I followed this up with an email later that evening.

While I was meeting with the Chairman he received a call from David Ritchie, who in spite of Kevin trying to explain he was with me, carried on to say that he was a bit worried about David Davidson as he might support Peter Hausmann but that he was trying to speak to him again. Kevin repeated the message to me, somewhat embarrassed. Kevin went on to say he had legal advice that the review Panel had erred re. Process and that board members individually could bring action against the panel. He explained that the Board would refuse to answer questions re. Governance and mentioned again the possibility of a judicial review.

**FILE NOTE : PERFORMANCE REVIEW : 13 November**

Today I met with the Remuneration Committee to discuss the subjective component of my performance review. The night before Kevin had received the letter from Peter Chemis regarding Kevin's letter to me re. 'disciplinary' processes.

Kevin introduced the meeting and explained that the objective measures had already been dealt with. All but chronic disease had been achieved and it was acknowledged that in hindsight the indicator was unachievable as it covered the 2006 calendar year and my kpis were only agreed in December.

Kevin explained that the positives were: objective performance measures Maori Health, positive way forward to staff, operating within delegations and relationship with PHOs.

The negatives were a building a trusting relationship with the Board. Only 1 member rated that as satisfactory or better. It was the same as last year he said. I asked if he could explain why in January 2007 my rating had been 100% on this indicator but was now at 9% and it was explained that it was largely due to the effect of the Review Panel on board/management relations.

As the discussion progressed it was clear there were really two conversations going on. Does the Board trust the organisation (no – largely because the OIA trawl has found documents the Board was not previously made aware of) versus my understanding of the question – does the Board have trust in the integrity etc of its CEO.

I explained to the Panel why I had responded to Kevin's 'disciplinary letter' with a letter from Buddle Findlay. Kevin said I had misunderstood the purpose of the letter and that it was never meant as a disciplinary letter – rather it had been written to protect me. He was not a lawyer so he had relied on the words he had been given.

I then spoke about the 'courageous conversation' ie where the Board sits down with its CEO and has a mature conversation about direction, succession etc. The offer was not taken up, but instead Kevin said that he felt I could easily be CEO for at least 8 – 9 years.

We then returned to the theme of trust and I asked the Committee to give examples of where I had broken that trust. No examples were given, however, Helen referred to "lies and deceit". I asked her to explain. She referred to:

- MOH judgement call re. community services rfp;
- Difficulty recovering information
- MSD contract


During the review Kevin got angry and told me that I had acted outside delegations re. MSD contract, authorizing a \$1m contract for which I did not have "it was a serious issue when CEO without delegated authority actions a \$1m contract". He went on to list a series of management failings he had observed (mostly relating to Sue and Ray).

At this point, both David Ritchie and I warned Kevin to stop before he went too far. I think we could both see this was not going to be a helpful conversation during a performance review.

I then said to Helen that I would be appalled if I had ever lied or deceived her and that I genuinely could not think of a time when I might have created that impression. I asked Helen had I personally ever lied or deceived her. Her words were; "I would rather not comment". I asked Kevin and he similarly replied "I would rather not comment".

There followed a long discussion about the review, impact on the Board, management etc. In the end we did not complete the review and agreed to reschedule.

At the end of the meeting, I indicated that I was unhappy with the performance review process and that we were in exactly the same place we were last year – ie where the Board were critical of management but we could not find a way forward. I reminded the Committee that I had written to the board last year suggesting a way forward (see Dec pre Board note) but that few if any of my recommendations had been acted upon. I said that I was tempted to write again, but felt that in the present circumstances that would only exacerbate matters, however, I was unhappy with my performance grading and given that SSC and others reviewed these issues, felt it was important that



the Board reconsider its assessment, particularly as the assessment seemed to have been so influenced by the Review Process.

The Committee agreed to do so and later that day the Chairman rang to say he would be recommending a \$6,000 ex gratia payment to the CEO. I agreed that there was, therefore, no need to send a letter to the Board.

#### **FILE NOTE : BOARD MEETING 14 NOVEMBER 2007**

During the closed session of the board meeting I raised a staffing matter and asked all staff, bar the minute taker to leave the room. I commented that I had received a letter in the previous week in which the Chairman commented that he had spoken to Board members and went on to refer, among other items, to "a disciplinary process may be commenced." I said the Board was entitled to an explanation as to why I had had the letter prepared and the context for the letter. I then went on to explain why I had spoken to Penny Andrew and asked her to contact Michael Wigley. I told the Board that I did not believe I had acted inappropriately. The Chairman reiterated his comments to me during the Performance Review that it was not a disciplinary letter, but rather the words had been suggested by the lawyers to protect the CEO. He commented that he was not a lawyer, so he did not understand what it mean, but if it had been a disciplinary letter he would have spoken to all Board members and would have had to follow a different process.


I stressed to the Board that the letter was prepared under my instructions and that it was clear in its message – it drew a line in the sand, but also indicated to the Board that it was not too late to pull back from any precipitate action..

#### **FILE NOTE : DISCUSSION WITH KEVIN 19 NOVEMBER 2007**

I met with Kevin at 12.30pm following a call in the morning where we agreed to catch up as I had concerns about a letter dated 16 November prepared by SLW that purported to represent the views of the CEO. Just prior to the meeting I sent Kevin and SLW an email setting out my concerns re. the letter and attachments.

Kevin arrived and was very angry – so much so that Kathy came through and shut the office doors. He was angry because I had copied my email to Penny Andrew the Board's legal advisor. He said that was in contradiction of his express instructions. I agreed that we had agreed I would not share the transcript, but my email was about process and how we ensured that our legal advice was aligned. I had not even referred to the transcript.

Kevin was very upset and explained that he had been criticized by the Review Panel for sharing the transcript with me in the first place. He went on to say that he was very uncomfortable about Penny working for me as she is married to David Grayson and he is part of the problem. He told me that married couples working together never works and that he thought her legal advice was poor, but that he would deal with that later. Given the strength of Kevin's reaction and as I had more important



issues I needed him to focus on, I asked Kathy to recall the email, which she did successfully.

I then went on to explain my concerns (see email of 19 Nov). Kevin disputed my assertions and said the board was willing to sign its statements under oath if management would do so similarly.

We worked our way through the 16 Nov letter and attachments until I reached the point where the Board said the "CEO said he had a good working relationship with the Chair". I told the Chairman that unfortunately this was not correct and actually contradicted what I had told the panel. What I had said, was that it was important to separate out the personal relationship (which I had said was good in that Kevin was very committed to the organization, was always available at the end of the phone and put huge hours into the DHB), from the issues with the Board/Governance relationship which I categorized as poor. Kevin contested that I had said this.

Kevin then got very angry and put the direct question to me – are you telling me, you do not support me carrying on as Chair. I told him I would work for whoever was the Chair of the DHB, but Kevin then asked two or three times – don't you want me as Chair. Each time I responded it is not appropriate to answer that question. Finally I said to him that surely we both had to agree that our working relationship was poor – only 1 board member had rated trust in the CEO as satisfactory and surely he did not want our relationship to carry on like this. I stressed that if Kevin was reappointed Chair, of course I would work with him, but it was essential that we sit down and agree how our relationship was going to work into the future.


He went on to point out that I did not understand how Hawke's Bay worked. People like me came and went. He was certain that none of the management team would be here in 5 years. If he was not Chair and out of towners were brought in, Hawke's Bay could turn just like. Currently the people of Hawkes Bay liked the DHB and the Board, but I should not take that for granted.

He also mentioned that the Board was convinced "there was a conspiracy among management to get rid of the Board". I denied this and reminded him that we don't elect the Board. I asked him what evidence he had for his assertion and he simply restated it.

The meeting ended at 1.20pm as we had a Site Steering Committee to attend.

#### **FILE NOTE : 21 NOVEMBER**

Received a copy of a letter this afternoon from Michael Quigg addressed to Peter Chemis re. 'disciplinary process' letter and requesting that Peter clarify if he is acting for me. 5 minutes later I received a voice message from Kevin (4.14pm) saying that he was giving me a courtesy call as he had just read the revised draft Audit management letter and it raised serious issues re. MSD contract and it was important I read it.



Note to self – follow up with Audit NZ as to why the issues re. MSD were not in the first draft audit letter, given the allegations at first site are serious and why Audit NZ did not raise the issues with me when they met me last week if they were so serious. Secondly why the Board insisted on meeting with Audit alone without CEO present last week to discuss the first draft management letter and why it was addressed to Kevin when normally it is addressed to me.

### **Wednesday 28 November**

The Chairman popped into my office before the scheduled Audit and Finance Committee to tell me that he was very concerned about the review report and the lies that management had told the review team. He restated a comment he made to me last week, namely that he was convinced that there “was a management conspiracy to get rid of the Board”. I said to him I thought that was a fairly strong statement to make. He agreed but reiterated it and evidenced it by the various “lies” management had told the review team.

Later in the Audit and Finance meeting Kevin challenged the COO regarding his reasoning for going out to consultation on the \$2.54 million additional electives spending. Warrick and I reiterated the rationale and I stressed that we were trying to protect the board given Kevin had a brother who worked for Royston, a number of our surgeons also worked for Royston and we were acting consistently with Treasury guidelines and our recently revised tending policies. The Chairman said that he still thought we could have done a deal with Royston under our MOU. He stressed that the fact his brother worked for Royston was not relevant as he had spent years trying to build a good relationship with Royston and it could all be undone by management’s actions.


### **Remuneration Committee Meeting Monday 4 February 1.30pm**

Met with the Remuneration Committee regarding three issues:

My ‘unwillingness’ to supply written answers to the Board re. Penny Andrew’s contact with the Review Team  
Access to Senior Staff to find out if they said they felt ‘battered., bullied and bruised ...’  
‘Practice’ of taping Board members

The Committee asked that Minutes of the meeting be taken and Kathy joined us to take short hand notes.

I explained that I had already answered the questions orally to the Committee last year and had furnished a response in a letter dated 12 November 2007. None of the members could recall my oral response. I said I was perfectly happy to answer any questions but that I proposed I speak directly to the Board first and then put it in writing as my experience had been that much of the miscommunication between board and management was because the Board talked about management rather than with management and that I often found that the Board misinterpreted written responses. The Committee were most insistent that I must write first but assured me






that I would be given the opportunity to talk to the Board before a decision re. disciplinary action was taken.

We next discussed the Board having access to my staff to find out if they said "battered, bullied and bruised etc". I said I felt a facilitated process using Graham Nahkies was preferable and this was the view of my direct reports as it could be used as part of the healing process, was anonymous and allowed all parties to have their say without fear of comeback. It came clear to me that the Committee has another more immediate agenda which is to rebut the Review Team ie to be able to say that management never said those things. The Committee conceded that I said our objectives were not reconcilable and my strong support remained for facilitation. The Committee pressed me on this point and Peter Dunkerley suggested a half way house. I talk to staff and see if they are willing anonymously to confirm or otherwise their comments. The Committee promised me that that would be the end of the matter and that a facilitated process could follow. I agreed to think about it as a way forward.

During the meeting the Chairman advised me that at the completion of the MOH Review he would be undertaking his own review of management as the Panel had not looked at management performance issues and he considered this was not fair. He said that the Audit Committee had yet to complete its own review of the MSD and Community Services contracts and that he had serious concerns regarding management performance. I asked him what he hope to achieve for the Review and to explain to me how this could be in the best interests of the organization. I told him I felt that all the learning had been done and that instead the Board should be focused on ensuring management was delivering on the Action Plan I had put in place. I told him that this would not be well received by the organization and I could not see how it was in the organisation's interests. He responded by saying that he was very angry that management had got away with repeated lies to the Panel and he was determined to sort the issues out once and for all.

We then discussed the alleged taping by Ray Lind of the Chairman. The Chairman expressed concern that I had not apologized on behalf of the organisaiton to him and that it was my issue to sort but he expected a letter from me to Ray expressing my abhorrence of the practice. I reminded the Chair that he already knew my views on taping and that I would never condone the practice of covert taping. I was asked if I knew of any other tapes and I said I did not.





11 February 2007

Kevin Atkinson  
Chair  
Hawke's Bay District Health Board  
HASTINGS

This is the Exhibit marked "G",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at *HASTINGS*  
this *3rd* day of September 2008  
before me:  
A Solicitor of the High Court of  
New Zealand

Dear Kevin

## DHB STAFF CONTACT WITH MOH REVIEW TEAM

### Introduction

I refer to Michael Quigg's letter to Peter Chemis dated 1 February 2008 stating that the Board is seeking an explanation from me in writing as to the full circumstances that led to Penny Andrew contacting Michael Wigley. In particular, I have been asked to report on the four matters identified in the third paragraph of your letter to me dated 6 November 2007. As noted in your letter of 6 November and Mr Quigg's letter of 1 February, subject to my answers a disciplinary process may be commenced against me.

I indicated to you that I had already addressed the issue in my oral briefing to the Remuneration Committee last year and in a letter dated 12 November 2007 from Peter Chemis of Buddle Findlay.

Last week I repeated to the Remuneration Committee that I was happy to answer any questions, however, it was my preference to talk directly to the Board first and then follow it up in writing, as it had been my experience that much of the current tension between Board and management was a result of us not talking directly with each other and instead relying on written communications as a primary means of contact. The Remuneration Committee concluded, however, that it wanted my answers in writing first, but that I would have the opportunity to talk to the Board.

The following are the four separate matters identified in your letter of 6 November 2007 to me.

1. The steps you took to ensure that all staff were made aware of the agreed formal process for contact with the MOH Review Panel
2. What instructions, if any, were given to Penny Andrew to contact Michael Wigley?
3. The circumstances in which Penny Andrew reported to you following her discussion with Michael Wigley.

4. Any subsequent discussion or contact you had with Penny Andrew regarding this matter.

You have also asked me to provide copies of any records relating to what occurred whether it be by way of file note, diary entry, memo, email or whatever. In addition, Mr Quigg states it is now understood that Penny Andrew may well have communicated with me by email on the afternoon of 7 November 2007 and, if so, copies of such email exchange is included within your request. These records are attached as appendix 1

**The Steps you took to ensure that all staff were made aware of the agreed formal process for contact with the MOH Review Team**

Following the commencement of the Review I explained to all my direct reports, the Communications Team, my office and the Legal Advisor that I would be managing the Review Team process from the management perspective. I stressed the following:


- a) this was a MOH Review and we all had an obligation to respond truthfully and fairly to all questions from the Review Team;
- b) all OIA documents were to be forwarded through SLW to ensure document management and coordination;
- c) if anyone felt uncomfortable at any stage responding to Review related questions they should immediately advise me;
- d) SLW were available to represent staff in the Review meetings if they chose to take up the offer;
- e) each person present was to brief team members only where it was likely they would have contact with the review team, as I wanted to keep the organisation's 'chatter' about the review to a minimum.

I do not accept there was a formal agreed process in relation to contact with the MOH Review Panel and all communication with the Review Panel would be channeled through one source (SLW).

I agree there was a meeting with SLW attended by the SLW representatives, yourself, the Legal Adviser and myself, in my office on 20 August 2007 where it was agreed that **all OIA documents** were to be coordinated through SLW. This agreement was reached in the context of the numerous OIA requests we were receiving, in particular from Russell McVeagh. Neither myself nor Penny Andrew at any time agreed, nor were asked to agree, that **all communication** with the Review Panel would be through SLW.

Secondly, I would not have agreed to a request that all contact with the Review Panel be only through SLW as it is essential as CEO that I can engage with the MOH's Review Team directly on issues relevant to management (see Buddle Findlay letter of 12 November). The Board were aware that while staff were offered SLW support, they all chose to meet with the Panel without SLW presence. This was not challenged by the Board.

Thirdly, you state in your letter of 6 November that the Board had "laid down" a formal process and that it was endorsed at subsequent meetings involving members of the Board on 5 October and 8 October 2007. I am not aware of any written documentation or record to this effect and, had I been so aware, I would have raised it with the Board at the time.





Fourthly, I mentioned to you on a number of occasions that I had been speaking to the Review Panel. At no time did you question my speaking with the Review Panel nor inform me that this was in breach of any formal agreements until after Penny Andrew's contact with the Review Panel re your request to meet with my staff to find out what they had said to the Panel.

**What instructions, if any, were given to Penny Andrew to contact Michael Wigley?**

Following a meeting with the Review Panel you requested to meet with my direct reports to find out what they had said to the Review Panel and, in particular, had they said they felt "battered, bruised, bullied ..."

I told you that while I felt the Board was being placed in a difficult position, I was uncomfortable with your approach for a variety of reasons. First, given this was an independent MOH Panel, I assumed the comments had been made and would be supported by transcripts of panel interviews. Secondly, all management staff had been told by the Review Panel that any comments we made to the Panel were in confidence and while no guarantees could be given, the Panel would do its best to ensure those comments remained confidential. Thirdly, I was worried that the Chairman's request might be misinterpreted by the Panel as an attempt by the Board to interfere with the inquiry process.

In addition to these concerns, I was very aware of my duty to my employees and the need for me to act with honesty and openness with respect to them.


You assured me your primary reason was not to rebut the Panel's argument. A number of Board members, including yourself, were personally very distressed that if management genuinely felt 'battered, bullied and bruised ...' that the Board needed to understand what lay behind them. You could not understand why the comments had been made as you thought you had a very good relationship with my senior executives. You also stressed that you wanted to meet that afternoon and asked me to make it a priority to organize the meeting. We agreed it was important I also attend the meeting.

I agreed to approach Win and Peter on that basis. We agreed not to involve Warrick as he had not been interviewed by the Panel.

Win commented that while he understood my reasoning in supporting the Chair's request, he was uncomfortable meeting with you in these circumstances even with the CEO present. He felt it could undermine the review process and also that it put him in a difficult position. He considered it was wiser to wait for the review process to be completed and then consider how to respond

I then called a meeting with John Pine, Win Bennett and Penny Andrew explaining the background and my dilemma – ie reluctantly I'd said "yes" to the Chairman, but Win for good reasons was signaling caution including the point I had not thought about, namely that this may compromise the Review Process itself.

We discussed the issues for some time and concluded that I should go back to the Chairman and say that on reflection I thought it was not appropriate. I commented that I thought the Chairman would be fairly insistent. I asked Penny to contact Michael Wigley (of the Review Team) to get the Team's views, particularly in regard to whether the panel were concerned that their process would be compromised and confirm that the Panel had



given an undertaking of confidence to my direct reports before I responded to the Chairman.

We agreed that as an employer I had a duty of care to my employees and need to ensure that they were comfortable with meeting with the Chair and an agreed process.

I then left for meetings for the rest of the day and returned to my desk early afternoon and rang Penny to find out how the advice was coming along. She said she had spoken to Michael Wigley and that he had concerns but he wanted to discuss the matter with the other Review Panel members and seek further advice if necessary and he would get back to Penny as soon as possible. Penny said she was waiting to hear further from Michael. I asked Penny to confirm what she had just told me by email and she promptly did this (see attached).

After I had finished speaking to Penny you called me. I explained the situation to you and read to you over the phone the email I had received from Penny. I made a file note of our discussion.

Your response to me was very heated and you questioned, among other issues, my motives. While I have been requested to supply all file notes, in light of the already tense situation between the Chair and CEO, I do consider it would be helpful to the governance relationship to release that material unless the Board specifically requests it.

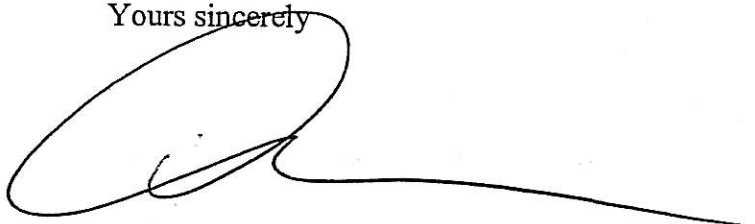
**The circumstances in which Penny Andrew reported to you following her discussion with Michael Wigley**

As set out above, Penny reported to me by a phone call followed by an email. Following your call to me, I made a phone call to Stuart Webster, as we agreed, to ascertain his view of the matters. I then spoke to Penny Andrew to confirm our advice to you. Penny stated she was still waiting to hear from Michael Wigley. I received a further phone call from Penny later in the day, approximately 5 o'clock that afternoon. Penny informed me that she had received a phone call from Michael Wigley and that Michael had advised her that he had spoken to the other Panel members and also taken advice from Crown Law. The Panel's response, as a result of that advice, was that the Panel did not have the power to issue any direction preventing you from meeting with staff members.

**Any subsequent discussion or contact you had with Penny Andrew regarding this matter**

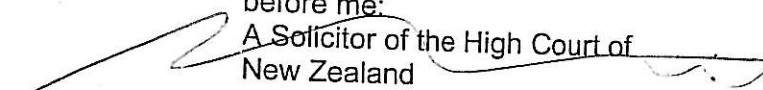
I have spoken to Penny on and off about this matter since then, more specifically in the past few days to get copies of any information she has relating to the topic.

Yours sincerely



Chris Clarke  
**CHIEF EXECUTIVE OFFICER**



This is the Exhibit marked "H",  
referred to in the annexed affidavit  
of CHRISTOPHER EDWARD  
CLARKE, sworn at HASTINGS  
this 3rd day of September 2008  
before me:  
  
A Solicitor of the High Court of  
New Zealand

13 February 2008

**PRIVATE AND CONFIDENTIAL LEGALLY PRIVILEGED**

Peter Chemis  
Partner  
Buddle Findlay  
WELLINGTON

Dear Peter

**HAWKE'S BAY DISTRICT HEALTH BOARD GOVERNANCE**

You will be aware that I have received medical advice that I must take a minimum of two weeks leave from the Hawke's Bay DHB. This is especially hard advice for me as I have never had a sick day in my life and I am conscious of the added strains this places on my immediate team.

As I will be away from the DHB at a critical time when the Board is considering its response to the 2<sup>nd</sup> draft report, I want to set out why I consider governance change is imperative in the event that you are required to represent my views in my absence.

The advice I have given the Review Panel regarding the Board stands, namely:

- inconsistent decision making
- highly personalised attacks on staff
- a toxic culture between board and management,
- a clash of values and the absence of trust
- poor judgement and an absence of strategy.

I now want to comment on recent events that further confirm that governance change is necessary. In fairness to my Board, however, I have only commented on items that I have already raised with the Board and are evidence based. My comments are in four areas, germane to the role of a Board:

- Staffing
- Resourcing and Priorities
- Accountability
- Judgement

**Staffing**

a) **Staff Resignations** – I have been separately advised by 5 of my 7 senior leadership team members, my Chief Legal Advisor and my Chair of the Clinical Board that they are considering resigning in the event there is not significant governance change, or I am forced to leave the organisation. I have strongly

own review of management conduct in January 2006 and it has been ongoing since then. I have advised the Chairman that a further review is not in the best interests of the organisation, will be costly and destructive and will further encourage senior staff to leave.

On 12 February the Chairman orally advised me that the Board will be legally challenging the Review now he has had the opportunity to read the 2<sup>nd</sup> draft of the Review report.

**c) Resourcing the Review** – My team is alarmed at the considerable financial resources the Board is committing to this review and there appears to be no end in sight particularly if the Board does proceed with further legal action. Under the DHB's Delegations Policy I am responsible for authorising all legal advice. The Chairman, however, has been authorising all legal advice relating to the Review, without reference to the CEO, despite repeated requests. The Chairman considers he has the authority as the Audit and Finance Committee has powers to seek independent advice.

#### **Accountability**

**a) Political and Media Engagement**– for some time I have been very concerned at the level of information that the media and some political parties have about my organisation, particularly as the DHB is appearing before the Health Select Committee in early April.

I cite in the attachments two examples of the challenges I am facing:

- a) an email from (REDACTED)
- b) last week my Chairman met with Craig Foss and Chris Tremain (local National MPs) in response to their request to discuss "progress on the Review and related matters". I offered to attend that meeting but the Chairman considered that was not necessary. Attached is a news clipping (Dominion 13 February 2008) citing the Chairman and Craig Foss commenting that proceeds from the sale of Napier Hospital may be used to break even financially and asserting that Hawke's Bay has been treated unfairly
- c) I also understand that some Board members have declined to sign the confidentiality agreement regarding the release of the 2<sup>nd</sup> draft report. I can only assume this is because they are unwilling to be fettered in their contacts with third parties.

We have very clear organisational policies relating to media and political party contacts and I have often had to remind the Board of these policies.

## Judgement

a) **Poor Judgement** – this has been a repeated theme in my advice to the Review Panel. Unfortunately I do not believe the lessons have been learned. By way of recent example I cite the December meeting of the Audit and Finance Committee that agreed to award up to \$600,000 elective services to Royston Hospital without a tender, against the advice of management and independent probity advice. My concern is that the Board has exposed itself to external criticism, particularly as a number of board members were conflicted yet participated fully in the discussion if not the vote. Unfortunately I am not in a position to attach the minutes of that meeting as the Chairman and Chair of Audit rejected the minutes prepared by my Chief Legal Advisor and myself in favour of minutes drafted by my Chairman. The Audit Committee will be considering whether to adopt the Chairman's minutes at its meeting next week. The Chief Legal Advisor and I have asked that our objection to the minutes be recorded.

b) **Unwillingness to Engage on Governance/Management Interface** - despite repeated requests to meet with the Board to discuss board/management issues, I last had the opportunity to discuss these issues for 10 minutes in December 2006. As recently as this week I met with the Remuneration Committee who seemed more interested in finding evidence to rebut the Review Panel's assertion that staff felt 'battered, bullied and bruised' than seeking to understand what may be underlying those concerns (minutes of the meeting to follow);

## Where to From Here

**The Issues are beyond Facilitation** - In a letter last year to the Board from the Executive Management Team we proposed a facilitated process to identify the issues and move forward. We saw this as preferable to a highly publicised debate in Parliament, which would do considerable damage to the organisation's reputation and would almost certainly see some of our clinicians engaging in the subsequent media debate. We proposed this course of action to reduce the likelihood of on going legal action by the Board which would cripple the organisation and tie up resources for a further two years.

As I explained to the Review Team at the time, in reality the issues are beyond facilitation. This would have been quickly revealed by a facilitation process. As CEO, nonetheless, I have to minimise the risk to my organisation and ensure that we can continue to do our real work. Thus the facilitation option was proposed as a way of taking some of the heat out of the debate and allowing the organisation to continue functioning rather than being torn apart by an increasingly acrimonious and expensive governance dispute.



Given that the majority of my board have been returned to office, it is critical that a facilitated process is commenced as soon as possible after governance decisions have been made.

**Recovery Plan** - Governance change of itself will not automatically secure financial and service sustainability and the requisite culture change. The three recent cardiac cases highlight there is much work to be done on clinical engagement and models of care, while our deteriorating financial situation is a cause of real concern to me.

I am working on a recovery plan that will hopefully involve the use of external advisors such as Graham Nahkies (on governance), Ray Naden and Ian Brown (on models of care) and a senior independent financial advisor. I am also keen to explore using these appointments to strengthen our links with Capital and Coast DHB at a governance, monitoring or advisory level.

**Position of CEO** - I wish to be clear – the current situation is intolerable. While I am committed to remaining the CEO of Hawke's Bay DHB beyond the completion of this review, I am also a realist. In the event there is not substantive governance change and an end to the legal processes, it will remain impossible for me to do my job and be effective. While there are many able people who can do my job, my concern is that my successor will face the same challenges my predecessor and I have both faced.

While it is for others to determine the DHB's governance, it will be my job to help 'win the peace' in a very small community, where for example the Chairman's property backs on to ours, the Chairman's brother is one of my senior clinicians and friendships date back to childhood. I know you understand the parochial, personal and political sensitivities of provincial New Zealand. I also accept, however, you may need to share this with others and I trust your judgement on this matter.

While I am now on leave and out of Hawke's Bay, I can be contacted via the office, via Karen at home (06)877 9934 or mobile (0275) 336 996

Yours sincerely

Chris Clarke  
CEO  
Hawke's Bay District Health Board