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IN THE HIGH COURT OF NEW ZEALAND  
NAPIER REGISTRY

CIV-2008-441-145

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IN THE MATTER OF

AN APPLICATION FOR REVIEW  
UNDER THE JUDICATURE  
AMENDMENT ACT 1972

BETWEEN

HAWKE'S BAY REGIONAL COUNCIL,  
CENTRAL HAWKE'S BAY DISTRICT  
COUNCIL, HASTINGS DISTRICT  
COUNCIL, NAPIER CITY COUNCIL  
AND WAIROA DISTRICT COUNCIL

APPLICANTS

AND

MINISTER OF HEALTH

RESPONDENT

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AFFIDAVIT OF DAVID GRAHAM GRAYSON

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CROWN LAW  
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Contact Person:  
MSR Palmer / UR Jagose

7/5  
17/2

I, David Graham Grayson, surgeon, of Hastings, affirm:

1. I am the clinical director of surgery and quality and risk at the Hawke's Bay District Health Board. I am also the Acting Chief Medical Adviser. I chair the Clinical Board, which is a group of senior clinical staff, including medical, allied health and nursing, which works with the DHB's management to implement DHB policy, and to resolve issues that may arise among clinicians. I have worked at Hawke's Bay Hospital for seven years, and have chaired the Clinical Board since late 2003.
2. In my role as chair of the Clinical Board I work on a daily basis with the chief executive and other senior managers. Before the dismissal of the Board in February of this year I also met from time to time with the Chair, Mr Atkinson. My role requires me to advise management on clinical issues, including any practical issues that might arise in implementing management's policies.
3. In that role I was able to observe first hand the interaction between the Board and DHB management. The job of management in a District Health Board is a difficult one, involving as it does the balancing of the demands of clinicians who advocate on behalf of individual patients with the needs of the wider community.
4. On several occasions I observed Board members getting involved in issues that should have been left to management. I felt that senior managers were required to spend so much time dealing with the Board that they did not have time to deal with clinicians and other staff. As a result, the process of actual decision-making became protracted and inefficient. In addition, the relationship between the Board and some managers had become confrontational. I gained the strong impression that the Board did not trust its managers to make the right calls on day to day matters, and this compromised the ability of managers to provide the necessary leadership.

248 76

5. My role as clinical chair meant that I had a lot more interaction with the Board and management than other clinicians. Most clinical staff are focused on doing their jobs, and interaction with management is often left to clinical directors.
6. I became increasingly alarmed at what I saw. By late 2007, the relationship appeared to have broken down. My observation was that key managers felt besieged by the Board, and that Board members, in turn, felt that managers were undermining them to the Ministry's Review Panel. Rather than working together to address the health needs of the community, it appeared that the focus on both sides had become the division between the Board and management.
7. The fact that the chairmanship and final make up of the Board had not been settled added to the problem. No-one knew whether the old regime would continue in the same vein as before, or whether there would be fresh leadership. Three other senior clinicians and I wrote to the Minister on 11 February urging him to make a decision regarding the chairmanship, on the basis that it was imperative for the DHB's ability to function that we had good governance in place. A true copy of our letter to the Minister is attached to this affidavit and marked as Exhibit "A".
8. The Minister telephoned me shortly after we sent this letter. He asked me what, in my view, needed to be done to resolve the situation, and in particular whether I felt that the appointment of a new Chair, and/or the appointment of a Crown Monitor, would be sufficient to resolve the difficulties that had arisen. I told him that I did not believe that this would be enough. Even if time and energy were spent trying to mediate between management and the Board, the conflict had become so entrenched that I doubted this would be successful. Previous attempts at conciliation had not worked, and by February the situation was worse than it had ever been. I told the Minister that, in my view, the situation required a circuit-breaker, in the form of the appointment of a commissioner.
9. When the Minister wrote to the Board on 20 February asking it to respond to a range of concerns, I decided to speak out. I did so because the Board and, in

JLS 76

particular, Mr Atkinson, had stated publicly that “the DHB is performing extremely well...”; “we do have some governance management issues which are a result of issues from the Ministry of Health review”. I knew that this was sidestepping the real crux of our problem, and that the difficulties at the top of the organisation were very serious. I thought it was important to convey to the public that there was more to the situation than had been stated by the Board. I appeared on Radio New Zealand on the morning of 21 February 2008, which was the day after the Minister wrote to the Board.

10. Later that day there was a meeting of senior medical staff. Less than half of the senior medical staff attended, but between 30 and 40 were present. A senior consultant sought to move a vote of confidence in the Board. I spoke against this resolution, indicating that there was far more going on than most clinicians realised. When asked to express confidence in the Board, the great majority of those present considered that they did not have enough information to make that decision. We resolved that we should not vote on the motion. The applicants’ allegation in paragraph 40(c)(vii) of the second amended statement of claim – that my views “were not shared by the vast majority of clinicians and senior medical specialists” – needs to be considered in that context. It is incorrect to imply, as that allegation does, that the majority of clinicians supported the Board.
  
11. It has been a common experience for those who have spoken out about these issues to be the subject of very strong personal criticism in response. In my case, my competence and professional integrity have been called into question, and I have been accused of having a political motivation for speaking out. For the record, I do not have any political affiliation, and while I am certain that the Minister’s decision to dismiss the Board was the right one, I have no particular affinity either for the present government or the Labour Party. I knew that by speaking out I would expose myself, and my family, to criticism (my wife, Penny Andrew, is the DHB’s legal adviser). It was certainly not in my best interests to speak out given the intensity of feeling in our small community. Nonetheless, I considered it important that the public was informed of the governance crisis faced by our organisation. As a clinician I

248. Jc

was very concerned at the expenditure of public money on internal schisms rather than health care.

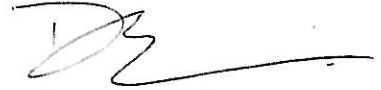
AFFIRMED at *Hastings* this *3rd* )

day of *September* 2008 )

before me: )



Faye L. Greville  
Solicitor  
Hastings



A Solicitor of the High Court of New Zealand

"A"

This is the Exhibit marked "A", referred to in the annexed affidavit of **DAVID GRAHAM GRAYSON**, affirmed at *Hastings* this 3 day of August 2008 before me:



A Solicitor of the High Court of New Zealand

11 February 2008

Faye L. Greville  
Solicitor  
Hastings

Copies:  
Mr Kevin Atkinson  
Chair HBDHB  
Mr Chris Clarke  
CEO HBDHB

The Honourable David Cunliffe  
Minister of Health  
Parliament Buildings  
WELLINGTON

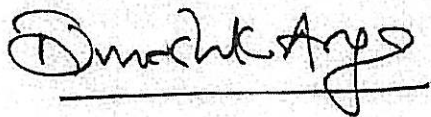
Dear Minister

Re **Chair of Hawke's Bay DHB**

We are writing to urge you to make a decision on the chairmanship of our DHB. The uncertainty regarding this is having an adverse effect on this organisation and as representatives of our clinical staff we feel it is imperative to have good governance in place. Further delay will only heighten tensions within our DHB. We need certainty in order to address the challenges facing us in delivering efficient quality healthcare.

We appreciate your attention to our request.

Yours faithfully



Dr Dinesh K. Arya  
MBBS, MD, DPM, MRCPsych, DM, FRANZCP, CHMS, DipHSM, MBS, FRACMA, FACHSE

**Chief Medical Advisor**  
Hawke's Bay District Health Board

Also on behalf of  
Dr Elaine Papps – Director of Nursing  
Dr David Grayson – Clinical Director, Surgery & Quality & Risk  
Ms Chris McKenna – Associate Director of Nursing

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THE OFFICE OF CHIEF MEDICAL ADVISOR

Hawke's Bay Hospital Soldiers Memorial

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