

SUPREME COURT OF QUEENSLAND

161
7 July 05
Haw

REGISTRY: BRISBANE
NUMBER: 595311 of 2005

Applicant: DARREN WILLIAM KEATING

AND

Respondents: ANTHONY JOHN HUNTER MORRIS QC, SIR
LLEWELLYN EDWARDS AC AND MARGARET
VIDER

ORIGINATING APPLICATION

To the Respondents: TAKE NOTICE that the Applicant is applying to the Court for the following orders:

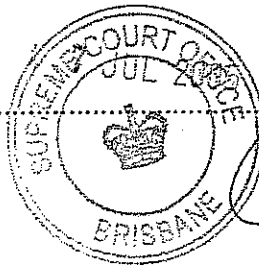
1. A declaration that the Respondents are disqualified from further proceeding with the Commission of Inquiry established by the Order in Council dated 26 April 2005 on the grounds of apprehended bias.
2. The Respondents be restrained by injunction from so proceeding.
3. Alternatively, a declaration and an injunction in the above terms, on the same grounds, pursuant to s.43 of the *Judicial Review Act* 1991.
4. Alternatively in respect of paragraphs (2), (4) and (5) of the matters appointed for inquiry in the terms of reference of the Commission of Inquiry a declaration that the Respondents are disqualified from proceeding to make findings or recommendations in respect of the Applicant.
5. Such further or other order, including as to costs, as the Court deems meet.

This application will be heard by the Court at Brisbane.

on: 11/7/05

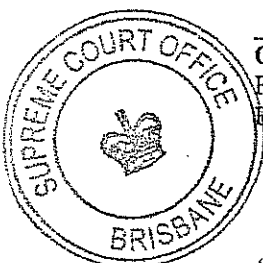
at: 10.00 am

Filed in the Brisbane Registry on



[Handwritten signature]

Registrar:



Originating Application
Filed on behalf of the Applicant
Form 5 R.26

Flower & Hart Lawyers
Level 19 National Bank House
Cnr Creek and Adelaide Streets
Brisbane QLD 4000
Phone: (07) 3233 1233
DX 144 BRISBANE
Ref: DW:JMJ:250796

Fax: (07) 3233 0900

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you may before the day for hearing file a Notice of Address for Service in this Registry. The notice should be in Form 8 to the Uniform Civil Procedure Rules. You must serve a copy of it at the Applicant's address for service shown in this application as soon as possible.

On the hearing of the application the Applicant intend to rely on the following affidavits:

1. Affidavit of David John Herbert Watt sworn 6 July 2005;
2. Affidavit of Applicant to be sworn.

If you intend on the hearing to rely on any affidavits they must be filed and served at the Applicant's address for service prior to the hearing date.

If you object that these proceedings have not been commenced in the correct district of the Court, you must apply to the Court for dismissal of the proceedings.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 3 days.

PARTICULARS OF THE APPLICANT:

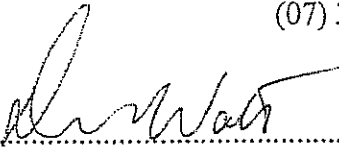
Name: DARREN WILLIAM KEATING
Applicant's residential or business address: c/- Bundaberg Health Services District
Bundaberg Base Hospital
Bourbong Street
BUNDABERG QLD 4670

Applicant's solicitor's name: David Watt
and firm name: Flower & Hart
Solicitor's business address: Level 19, National Bank House
Cnr Creek and Adelaide Streets
BRISBANE QLD 4000

Address for service: Level 19, National Bank House
Cnr Creek and Adelaide Streets
BRISBANE QLD 4000

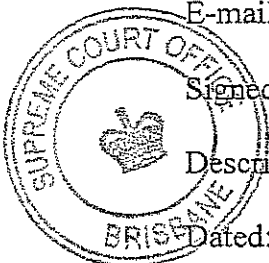
Dx (if any): 144 Brisbane
Telephone: (07) 3233 1233
Fax: (07) 3233 0900

E-mail address (if any):

Signed: 

Description: David Watt - Solicitor for the Applicant

Dated: 7 July 2005



This application is to be served on:
of:

ANTHONY JOHN HUNTER MORRIS QC
c/- The Crown Solicitor
State Law Building
50 Ann Street
BRISBANE QLD 4000

And on:
of:

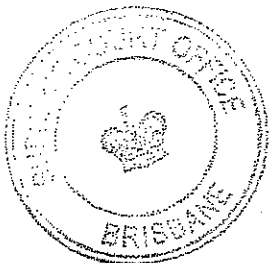
SIR LLEWELLYN EDWARDS
c/- The Crown Solicitor
State Law Building
50 Ann Street
BRISBANE QLD 4000

And on:
of:

MARGARET VIDER
c/- The Crown Solicitor
State Law Building
50 Ann Street
BRISBANE QLD 4000

And on:
of:

THE ATTORNEY-GENERAL
State of Queensland
State Law Building
50 Ann Street
BRISBANE QLD 4000



SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: of 2005

Applicant: DARREN WILLIAM KEATING

AND

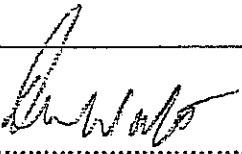
Respondents: ANTHONY JOHN HUNTER MORRIS QC, SIR
LLEWELLYN EDWARDS AC AND MARGARET
VIDER

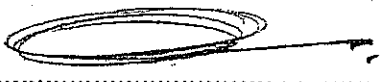
AFFIDAVIT

David John Herbert Watt of Level 18, 255 Adelaide Street, Brisbane in the State of Queensland, Solicitor states on oath:

1. I am a partner of Flower & Hart, solicitors for the applicant and I have the conduct of this action on behalf of the applicant.
2. The respondent, Anthony John Hunter Morris QC was appointed as a commissioner under the *Commissions of Inquiry Act 1950* by Order in Council made on 26 April 2005. The respondents, Sir Llewellyn Edwards AC and Ms Margaret Vider were appointed Deputy Commissioners pursuant to the said Act by the Commissioner on 28 April 2005. Exhibit DJHW1 is a true copy of the Order made 26 April 2005 and appointment dated 28 April 2005.
3. The applicant was and is the Director of Medical Services at the Bundaberg Base Hospital, having commenced in that position on 14 April 2003, following an appointment made on 21 January 2003.
4. The Director of Medical Services position has a job description which varied from time to time, but in general terms the duties and lines of reporting, I am instructed, are reflected in the position description exhibited to the affidavit of the applicant to be filed herein.
5. The Director of Medical Services reported to the District Manager. The heads of the various medical departments, including the head of surgery (Dr Patel) and the head of medicine (Dr Miach) reported to the Director of Medical Services.

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Deponent


Taken by
Solicitor / Justice of the Peace

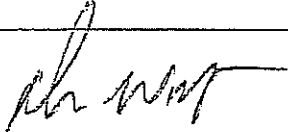
Affidavit
Filed on behalf of the Applicant
Form 46 R.431


Flower & Hart Lawyers
Level 19 National Bank House
Cnr Creek and Adelaide Streets
Brisbane QLD 4000
Phone: (07) 3233 1233
DX 144 BRISBANE
Ref: DW:JMJ:250796

Fax: (07) 3233 0900

6. The Director of Nursing reported to the District Manager and the nurse unit managers (including Toni Hoffman for the Intensive Care Unit) reported to the Director of Nursing.
7. In issue at the Inquiry has been the extent of the complaints made to, and therefore the knowledge of the applicant concerning the clinical conduct of Dr Patel, and the appropriateness of the applicant's response to that conduct.
8. Central to that has been a claim that Dr Miach gave to the applicant in or about May 2004 a document being exhibit 18 before the Inquiry described as a peritoneal dialysis catheter placements audit. Exhibit DJHW2 is a true copy of that document.
9. An earlier version of that document was created at some time and became exhibit 69. Exhibit DJHW3 is a true copy of it.
10. The timing of the versions of the documents and their provision to the applicant remains in issue.
11. On the hearing of this application the applicant intends to have tendered a copy of the transcript of the proceedings to date. It is not exhibited hereto because of its size. I refer below to a number of references in the transcript to be relied upon by the applicant, which list is not exhaustive, but is intended to assist in identifying the nature of the complaint of the applicant and the major points.
12. The proceedings have been filmed by various television stations. It is intended that the film will be subpoenaed with a view to playing selected parts to the court to demonstrate, in a way the transcript does not always do, the differential treatment of witnesses before the inquiry.
13. It is also intended that copies of exhibits 4 and 21, being statements of Ms Hoffman and Dr Miach, will be put before the court. They are not exhibited hereto because of their size.
14. On the afternoon of the 4th day of sittings the applicant was summoned by the Commissioner to give evidence on about five minutes notice. No objection was taken to that course, even if it could be, because to do so would appear to be uncooperative with the Commission.
15. Under the *Commissions of Inquiry Act 1950* the Commission has powers to obtain information from persons such as the applicant by other means and those powers were exercised during a break in sittings following the initial two week sittings. Exhibit DJHW4 is a true copy of a letter from the Commission dated 7 June 2005 enclosing a summons to the applicant. The summons was complied with. In that context the reason for causing the applicant to give evidence in Brisbane at the time is not apparent to me.

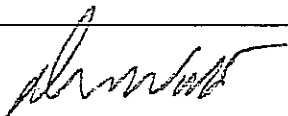
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Deponent


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Taken by:

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16. The questioning of the applicant on day 4 was carried out entirely by the Commissioner and not counsel assisting. It did not appear as if counsel assisting had any role to play in the decision to call the witness or what he would be asked. The questioning carried with it a sarcastic and cynical tone, and was aggressive, though not so much as the questioning of Mr Leck which immediately preceded this process. It otherwise stood out in contradistinction to the questioning of other witnesses.
17. On 10 June 2005 the commission published an interim report. In it certain findings were made concerning issues of improper patient care by Dr Patel during the applicant's time as Director of Medical Services, including a recommendation there be a murder charge brought against Dr Patel. No notice of the intention to make such a report, or an opportunity to make submissions was provided to the applicant. The report was made following the evidence in chief only of the witnesses relied upon by the Commissioner, being Ms Hoffman and Dr Miach. Exhibit DJHW5 is a true copy of the interim report.
18. The cross examination of Mr Leck is from pages 355 to 371. The cross examination of the applicant commences at page 391. Following this cross examination there were some submissions made by counsel at pages 866 to 871. Reference is made in particular to page 869.40. Reference is then made to the cross examination of Dr Miach on 29 June 2005 at pages 1595 to 1653. Particular reference is made to 1638.35. Attention is also drawn to pages 1595 to 1601, and 1673 to 1680.
19. The context and the significance of the matters sought to be explored appears from pages 1137 to 1138, where the Commissioner particularised matters the applicant should address.
20. Reference will be made to selected examples in the evidence of a number of witnesses, including Dr Miach and Ms Hoffman where leading questions are asked by the Commissioner and comments are made suggestive of a pre-disposition.
21. The applicant makes the application on the basis that the matters referred to give rise to a reasonable apprehension of bias on the grounds of pre-judgment and differential treatment of witnesses.
22. I am aware from statements made during the conduct of the Commission of Inquiry by the Commissioner and Counsel assisting the Commission that the issue of complaints made to the applicant concerning Dr Patel and the applicant's response to those complaints is the subject of an investigation by the Crime and Misconduct Commission. Counsel for the Medical Board of Queensland has advised the Inquiry that the Board is conducting its own investigations concerning matters involving Dr Patel. On 26 April 2005 the Premier of Queensland announced that an independent review of Queensland Health's systems is being conducted by Mr Peter Forster. Various media reports in recent times have indicated that Queensland Police are conducting their own investigations of Dr Patel's actions.



Deponent

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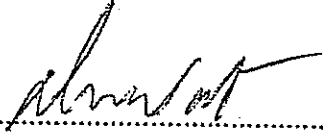
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Taken by:
Solicitor / Justice of the Peace

23. All the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by DAVID JOHN HERBERT WATT on 6 July 2005 at Bundaberg in the presence of:



Signed:
Deponent



Person taking affidavit:
Solicitor / Justice of the Peace
ALEXANDER BRUCE DALTON
SOLICITOR

SUPREME COURT OF QUEENSLAND

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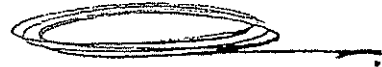
Respondents: ANTHONY JOHN HUNTER MORRIS QC, SIR
LLEWELLYN EDWARDS AC AND MARGARET
VIDER

CERTIFICATE OF EXHIBITS

Bound and marked DJHW1 - DJHW5 are the exhibits to the Affidavit of David John
Herbert Watt sworn 6 July 2005:



.....
Signed:
Deponent



.....
Person taking affidavit:
Solicitor / Justice of the Peace

ALEXANDER BRUCE DALTON
SOLICITOR

INDEX TO EXHIBITS TO AFFIDAVIT OF DAVID JOHN HERBERT WATT
SWORN 6 JULY 2005

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