IN THE DISTRICT COURT
AT QUEENSTOWN

CIV-2003-002-265

BETWEEN	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Plaintiff
AND	**THE WANAKA GYM LIMITED**
	Defendant

AFFIDAVIT OF FIONA GRAHAM IN SUPPORT OF APPLICATION TO VARY INJUNCTION

DATED 13 JULY, 2009

Next event date:
Judicial Officer:

I, Fiona Graham, company director, of Wanaka, swear:–

1 That I am the sole director and shareholder of the Defendant company.

2 The Court ruled in its decision dated 18 November 2008 on my application to rescind the injunction that I had not established to the satisfaction of the Court that the premises were safe. There are two issues pertinent here: whether the house was safe as a residence, and whether it was safe as visitor accommodation.

3 The house's safety as visitor accommodation: The house did not need to be safe as visitor accommodation as the house was not visitor accommodation, but was a single household unit of long-term tenants sharing the premises and signed up on a single long-term tenancy contract, and I have seven affadavits to this intent. I plan to appeal this if possible.

4 Secondly, re the house's safety as a house. The house was perfectly safe as a house and work to that effect had been completed by the time of the eviction. I had requested, through my architect, who was present at the eviction, that the QLDC inspect the house to ascertain its safety as a residence prior to evicting the tenants, but the council refused to do so and proceeded to evict the tenants. It was impossible to establish the safety of the house as a SHU on the day of the eviction as the QLDC had refused to inspect it. Had they inspected it they would have found it was safe and that there was no need to evict the tenants. An affidavit accompanying this application states that the house is safe as a residence.

5 The Court also formed the opinion that the premises had not been occupied as a Single Household Unit (SHU).

6 The house was occupied by a single group of people who fit the definition of a household unit, who lived together as a single group, and shopped, cooked and socialised together, and seven of these people have produced affadavits to this effect. If I am able to appeal this I will do so.

7 The house is currently empty and has neither accommodation nor visitors. It is an empty house in a residential zone, only has a resource consent for residential use,

and is charged residential rates by the QLDC, as it has been for the last eight years.

8 I have engaged the services of an expert whose evidence is that the premises are safe as a SHU.

9 I have engaged the services of an expert whose evidence is that the premises are safe electrically.

10 I confirm that the house will be operated as a SHU.

11 I normally reside in the premises whilst living in Wanaka and I have been prevented from doing so by the terms of the current Court order, thus causing extreme hardship to me. I had been forced to leave NZ altogether as I have nowhere to live in Wanaka, and my only support in Wanaka was through my rental income. I have had to seek refuge with friends overseas in the country that I grew up in. I have now finished my work overseas and have nowhere to live currently but in my own house. My hardship is on two grounds: I am homeless myself and have been for ten months, and I have had no income to pay the mortgage while the house has no tenants and have not had such income for ten months. I have had to borrow large amounts of money from my mother to cover the mortgage costs, which has been very hard on her too, and which cannot continue.

12 I am currently resident in Wanaka, and without rental income from the property and unable to stay in my own house I will be forced to stay outside in the middle of winter if this injunction is not lifted. It seems ludicrous that I am not able to use my own house for residential purposes when it is in residential one zoning, and when I have paid residential rates for the last nine years and the council has always regarded it as a house for rates purposes.

13 I have worked continuously over several years to upgrade the house to visitor accommodation standards voluntarily. At the time of the eviction the house was very close to fully complying, and six handymen were employed at the time to finish that work, expecting to make the house fully compliant with visitor accommodation standards within two weeks. That work was stopped by the council evicting the men who were doing the work. Lifting the injunction would

allow resident handymen to continue doing the work that was interrupted, and the house would very soon fully comply with visitor accommodation standards. As I have no income it is not possible for me to employ labourers apart from by work exchange: by offering free accommodation in exchange for labour as has always been our practice.

14 The above is a particularly important point: if the council's objective is not to remove me from my income and thus force me into bankruptcy, then why did they need to evict my handymen who were busy upgrading the house to the standards that the council apparently wants to see? Why can they not allow me back into the house now, with my handymen so that I can finish my voluntary complying with visitor accommodation standards? If the council would like to see the work on the house finished so the house is completed to visitor accommodation standards – which I have voluntarily agreed to do even though I do not have visitor accommodation and do not propose to have any in the future – then they should logically agree to allowing my handymen back in and giving me the means by which I can finish the house.

15 I confirm that I only plan to use the house as a residence, and occupy it as a single household unit, fulfilling the conditions for a residence under both the Resource Management Act and the Building Act.

BACKGROUND

16 I owned a gymnasium on this site which I closed in 2000 leaving me with an empty factory building in residential one zoning. I thoroughly researched my options through the lawyer I had at the time, and through looking at the Building Act and the Resource Management Act. I determined that all that was needed for the building to be classified as a residence was for me to notify the council that I had closed the commercial gym – which I did – and notify them that from then I would use the building as a residence, with long-term tenants living as a single household unit. In New Zealand law, the only stipulation on a residence that is

classed as a household is that there are fewer than 40 people living there. A house is not determined by the numbers of people as long as they are less than 40. A house is not determined on how it looks. A house is determined by its use. I thus determined that it would be legal for me to keep the building and convert it to a residence. I put four tenants on the property signed up on long-term tenancy agreements, all sharing the house facilities and living as tenants do in any student flat.

17 The fire safety features that had been in use in the commercial gym (and which had been inspected & approved by the council annually) were all still in place in the building making the building an extremely safe residence and far beyond the safety standards of any normal residence in Wanaka. Additionally, I made voluntary efforts – without any legal requirement to do so – to slowly upgrade the property to visitor accommodation standards. I had not desire or ability whatsoever to ever operate visitor accommodation myself – as I live overseas often – but I wanted the flexibility of being able to sell it as visitor accommodation or as a residential house.

18 One month later the QLDC, evicted all my tenants, without giving appropriate notice of any kind. They claimed that I was operating illegal - short-term - visitor accommodation. They did not ask to see or verify the long-term contracts in place. At the time, they made no claim about safety concerns.

19 It took two years for this to be ruled on by the Ombudsmen's Office, while I was unable to renovate or do any work on the building, or put good quality tenants in an normal finished building, causing me extreme hardship. The Ombudsmen's Office ruled six out of seven counts in my favour and ruled that the QLDC should not have evicted the tenants. In the meantime, the council refused to process any building consent applications that would have resolved any outstanding issues and allow me to rent the premises out as a source of income.

20 After the ruling of the Ombudsmen came out, meaning that I could now move to have my building consent issued, the council immediately retaliated by declaring the house a fire danger, again on the accusation that I was operating short-term visitor accommodation. The house fulfilled very high fire safety standards *as a residence*, but the council insisted that I should comply with visitor accommodation standards, regardless of the fact that I have never operated visitor accommodation or had any kind of short-term tenants.

21 During this period, the council's harassment was extreme. They sat in cars at 11 pm at night and early morning outside my property noting the tenants number plates to determine who was staying there. At one stage, they sent a son of one of the council officers into the property to pose as a tenant. They constantly have come onto the property without notice, or threatened tenants and caretakers into letting them in on false pretences. Despite all their efforts then and in the following years, they have never been able to obtain any kind of evidence that I have operated the house in any way but a normal residence with long-term tenants. This is because I have never allowed anyone to stay at the property on a short-term accommodation arrangement. Morever, the house looks like and feels like a regular house with a homely atmosphere and a group of people that all form a cohesive household unit. As all the facilities in the house are shared, and there really very little privacy in the house, it is important that we have a group of people that work well together and all get on. By any standard, this is what constitutes a "household".

22 In a subsequent ruling, I was vindicated, and it was determined that I had not been operating the property as visitor accommodation providing short-term accommodation. The QLDC was ordered to issue the crucial building consent that would allow me finally to divide the building into bedrooms.

23 Two years later, in defiance of judge's orders, the QLDC still refused to issue the building consent. It took two years for me to be able to save the money and afford to take them back to court again to force them to obey court orders and issue the

consent. Finally, they were forced to issue the consent in 2005. Since then I have continually renovated the building as I could afford to do so.

24 While making renovations, I made every effort to comply with safety regulations for commercial visitor accommodation over and above that of a mere residence. Despite the council's obstructive nature and attempts to sabotage my livelihood, I have always complied with the concerns of the council inspectors regarding safety. Rather than offering me advice during work-in-progress, the council have sought to delay consent, or to find fault with quibbling details that could be remedied within a day, or more crucially by refusing to give me information about items, even those relating to fire safety, preferring instead to save items up to present in court. Even though the property currently operates only as a residential unit, it has complied 99% to the standard of a commercial property offering short-term visitor accommodation. Even today, the building is 99% compliant, and the remaining items have only been delayed by the council's total refusal to cooperate in giving information about how to finish the work to visitor accommodation standards.

25 All of my tenants are always on fixed term three month tenancy agreements for their initial three months of tenancy, thus absolutely ensuring that they are legally on long-term tenancies and cannot stay for a short period. Nevertheless, in 2007, the QLDC found three tenants who had broken their tenancies and moved out of the house against my will (thereby losing their bonds in the process). The QLDC took me to court in an attempt to argue that these tenants breaking their contracts constituted evidence of me running short-term accommodation. This was defeated, of course, as the QLDC was unable to furnish any evidence of me running visitor accommodation. The second court ruling that confirmed that the property was operating as a household.

26 Recently, some of the tenants – who were illegally evicted by the council in June 2008 – obtained yet another court ruling in tenancy tribunal where it was established that the property was a household.

27 In 2008, I was implementing the last of the building work that would enable the property to comply with fire safety standards for visitor accommodation. My architect had been working closely with the council on trying to finish the last of the work, but the council has been constantly obstructive. I have bunk beds in many of the rooms in my house (there are no fire safety regulations about bunk beds in a residence), but the council insist on classifying the bunk beds – only slightly larger than a double bed - as "mezzanine floors". When I have requested that they explain what I need to do to have them regarded simply as bunk beds, the council refuse to answer. When I ask for the distinction between bunk beds and mezzanine floors, they refuse to answer. They have since taken me to court yet again on criminal charges, one of which issues is the bunk beds. It has been impossible to move forward at all in the face of the council's constant obstruction.

28 In June 2008, the QLDC came on to my property without permission or notification in June 2008, telling my caretakers that they were the council (afterwards claiming they were invited inside).

29 As a result of their illegal inspection, they issued a notice to fix, stating a number of points pertaining only to visitor accommodation, but also one point pertaining to residential houses. They declared my ceiling an "urgent" fire danger. This is despite the fact that my ceiling had been in the building for 13 years, through every consent that the council themselves issued. They also required an electrical report post recent renovation. They also had issues with other minor matters that pertain only to visitor accommodation.

30 Knowing that the council were obviously intending to try to evict my tenants again, I complied with their requirements about my ceiling immediately, pulling the whole ceiling down within the day. I got an electrician in immediately to sign the electrical work off,. The QLDC were most uncooperative – to the point of being misleading – in giving opinions as to a suitable replacement material. I chose a material widely in use in commercial buildings and cinemas, but Peter Laurenson, the safety inspector, repeatedly told me that the material I chose was

not suitable (this opinion was entirely untrue). We were much delayed by having to get a fire engineer to inform the council that the material chosen was indeed suitable. My architect was working very hard as liaison between the council and my builders trying to ensure that the work was finished as quickly as possible.

31 Despite the council's efforts at delaying the completion of the ceiling as the eviction date drew closer, the work had already been completed at the time Peter Francis, a council officer, came to evict the tenants. I had already e-mailed Peter Laurenson asking him to inspect the completed work in writing. Tim Francis was asked to inspect the ceiling through my architect on the day of the eviction. The building was in fact safe and the tenants did not need to be evicted at all. But Tim Francis refused to do the inspection, saying that it was too late, and that he had come to evict the tenants, regardless of whether the building had complied with the order or not. He was very aggressive towards the architect and told her not to do any more work for me.

32 There was another aspect to this incident that I believe is of considerable public interest. The architect – who does work for the council – told me that she was threatened by the council, and that she was scared that if she acts as a witness against the council, she will be barred from obtaining work from the council in future. This has been a constant theme in all my dealings with the council and it has been extremely hard over these eight years to get builders to work for me as a result. I have suffered constant underhand harassment of this kind by this council. It has affected me financially, it has delayed building work and has caused disruption to my life in general.

33 At the time of the eviction, I had complied with the QLDS's requested alterations, save for the following four minor points according to the council:

(a) several of my fire exit signs were handmade instead of bought ones,

(b) several of my partition walls were between 10 cm and 30 cm too high and needed to be cut down in height,

(c) a platform outside a fire exit door had been made of untreated timber instead of treated timber,

(d) one door had been wrongly installed to open in instead of out.

All of these items have now been fixed except for (b). This could be fixed in one or two weeks if I had my handymen back in the house.

34 Even if the council had been right in calling my house visitor accommodation, the house still fully complied but for the above four items.

35 The most important issue here is that the only item of the above that could possibly constitute an urgent fire danger, even in visitor accommodation was the last one, a door that opened in instead of out. I had spent weeks, and many e-mails asking the council which of the many doors in my house they had an issue with. They had refused to tell me, and deliberately misled both myself and my architect to believe there was something wrong with a fire door in the house, while all the time they were "saving" this issue up to present in court.

36 The door has been fixed since, and took an hour to change. It was for this one single door that a large group of young people were evicted in the middle of winter.

37 There were six handymen on the premises at the time. The council was very well aware that the work was being done as they had liaised with the architect for several weeks. The council were fully aware that the remaining work to be done for the house to comply as visitor accommodation would only take another week or two with six people working on it. They were also fully aware that evicting my tenants and handymen working on the property would mean that the work would be interrupted and that I would not be able to finish it. In other words, the

QLDC's intentions were very clearly to stop and disrupt me from fully complying with visitor accommodation standards, and to exacerbate my financial losses and sabotage my ability to derive an income from the property.

38 To date, items (a), (c) and (d) have been rectified. It only required a day to do so. The only reason that (b) has not yet been completed is because the council have absolutely refused to cooperate in giving the information about what would satisfy them. The property is still legally defined as a residential household, according to my resource consent, and according to three separate court rulings, I am NOT legally obliged to do this work in any case.

39 Some additional issues are pertinent here: that of the council's ownership and use of the property next door to mine, a double block of land. An independent investigation may reveal that this relentless pursuit against me has something to do with the QLDC applying to change the use of this land from residential use to industrial use – despite it being surrounded by a sea of ordinary residential homes. In applying to change the zoning of this land, the council did not notify my Company (either by serving documents to the registered address, nor by email, which I have requested as my preferred method of communication), nor to any of the tenants residing there at the time, nor to the caretaker of the property. The "independent" commissioner in charge of the hearing to rezone the land was none other than Michael Parker himself, the council's lawyer. Michael Parker was in discussion with me about compliance issues on Friday afternoon, while simultaneously acting as independent commissioner in the resource consent hearing on Monday morning. The QLDC has an obligation to make their best efforts to contact neighbours; this was certainly not done in this case. Michael Parker backed out eventually as independent commissioner, but not until the very last moment, when he had already had ample opportunity to influence the outcome. Though a new commissioner should have been appointed, the QLDC refused to reopen the hearing, and the decision was made with the remaining commissioner. Throughout the papers in the hearing, and with correspondence

with neighbours, the QLDC referred to my property as visitor accommodation though it has not ever been used for that purpose, nor has the QLDC granted me a resource consent for visitor accommodation. The outcome of the hearing was that the QLDC would use the land for industrial purposes, with heavy duty machinery starting up at 6 am not three meters away from where I will have tenants sleeping. The council has every reason to wish me off my land, and has been extremely aggressive in their attempts to achieve this through unnecessary and expensive litigation, illegal evictions and harassment.

40 In my resource consents to operate a gymnasium in 1994, and an additional consent to operate a homestay operation in 1997, and in subsequent residential consents, the council approved plans outlining the use of my carpark, in front of the building, which is partly on my own land, and partly on road verge, administered by the council. The initial consents were issued on condition that I had parking, and on sighting of a parking plan clearly showing the parking to be at the front of the building, and after inspection by the District Planner, who could not have failed to note the carpark lay partly on road verge. The District Planner approved the carpark in that position and the QLDC should have issued a License to Occupy. Either they did not issue it, or they have lost it. They are now attempting to remove my carpark.

41 Further, the QLDC, are approving the change of use of the land behind my house, again to industrial use, to house a large workshop for people to conduct trades, including welding, building, carpentry etc. This means that the QLDC has succeeded in, or is trying to change the use of the land on all three sides of my house.

42 About the property itself: the absolute maximum the house can sleep is 24 people in the winter time, but it is not normally this full, and in fact, in summer it has an average of 8. These people are housed in 12 bedrooms so it is not at all overcrowded or excessive in any way. It is simply a very large building. There is one shared kitchen, two shared lounges, and two bathrooms. The 2005 consent to

divide the former factory building into 12 bedrooms was processed and passed by the QLDC. At no time did they declare their intent to prevent me from using the house as a residence. Nor did they have any complaint about it for several years while I used it solely as a residence.

43 The building has one central corridor with bedrooms on both sides. Every bedroom has a window leading to the outside, and in practice, there is no doubt that tenants would go straight out their own windows in case of fire. We have stringent rules about fire, written into our tenancy agreements. No tenants can smoke inside or have any kind of flame. All of the commercial grade fire alarms and fire hoses in use when the property was a gym are still there. We have all the fire extinguishers necessary to meet visitor accommodation standards. Even in 2000 we were well above the fire safety standards of any residence.

44 Tenancy Arrangements. Our tenants come to us by recommendation either through past tenants through ads in the local papers. This season we had a large group of tenants who all knew each other from France and who had known each other long before they even arrived in New Zealand. Because the house is very large we have a caretaker (who is paid by the tenants directly from a portion of their rent) who is responsible for cleaning the common areas, but also for ensuring fire safety and compliance with our non-smoking rules etc, and more than anything for making sure that the house is a cohesive household with everyone getting on well. It is because we are very successful at creating a great atmosphere in the house that people want to live in this house. There are many people from all over the world, who have made lasting friendships in this house because we use it as a house, and because it feels like a house and not like a hostel. Most tenants arrive in Wanaka and stay at a backpacker for a short while, and then when they have found long-term accommodation, like our house, they move in for the season. Tenants do not normally move from one backpacker to another; they move into our house because it is a house. The tenants usually have jobs or part-time jobs and all work different hours. The household resembles a student flat in

many ways, but is much more cohesive than a student flat as everyone is in Wanaka for the same purpose and share the same objectives and outlook. People cook for themselves in the shared kitchen and, on one or two nights a week, everyone eats together. One person usually shops and cooks for everyone else on that night.

45 We have the same group of tenants for the whole winter, so it is one cohesive group for a full 3 – 4 months. We have a very large spa which the tenants all share on returning from the mountain. We are a much more cohesive unit than most student flats, because we make a big effort to choose a group of compatible people from the beginning, another reason that we have been so popular with tenants, and because they are all in the house for the same purpose and for the same amount of time. In practice, they become friends very quickly, and are much more likely to be friends than in a student flat where they may not share any interests at all. The tenants all share transport to the mountains, and they all socialise together in their time off work.

46 Wanaka is full of houses in winter that are occupied by one person first, who then advertises for flatmates and gets other tenants in who they did not previously know. Most of the mountain staff are such people coming in from overseas. My house is no different from any other such house in Wanaka.

47 We advertise for tenants in the backpackers in town. This is because the people staying in backpackers are looking for long-term accommodation in normal houses which is what we provide. The backpacker in Wanaka would not have allowed us to advertise on their noticeboards for the last ten years if we had been competing with them by offering short-term accommodation. They are fully aware that we do not offer short-term accommodation ever. They also know that we are a normal house, which is why they frequently recommend their guests who are looking for long-term tenancies, to us.

48 Wanaka is a very small town. I have tradesmen constantly going in and out of my property. All of the tenants work in various businesses in town and talk about their living situation. It would have been obvious to all if I had been operating the property as a visitor accommodation. Indeed, short-term visitors are turned away and advised to stay at hostels or hotels in Wanaka that do offer short-stay accommodation. Everyone in Wanaka knows that my house is simply a house with long-term tenants all living as a single house-hold.

49 The illegal harassment that I have suffered for nearly ten years from this council has been extreme, and terribly debilitating in terms of finances and health. They have quite literally stopped at nothing, attempting or actually evicting my tenants four times in nine years, and taking me to court now six times in nine years, on the very same grounds: accusations that I am running short-term accommodation, or that my house is not a residential house. In nine years, they have found absolutely no conclusive proof that I have run short-term accommodation, and I have seven affadavits with my appeal stating that the house was certainly shared by a single group of people in a normal residential manner.

50 I am simply requesting that I be allowed to continue living in my own house, that my family can stay in my house without fear of eviction (my own parents have now been forced out of my house twice), and that I have long-term tenants signed up validly on long-term tenancy agreements.

51 I have been upgrading my house continuously to visitor accommodation standards over these nine years and the only reason that the work has not been finished is because of the constant illegal harassment, sabotage, and disruption caused by the council. I ask for the opportunity to continue living in my own house, and being able to continue the work that was disrupted last August and which should result in fully finishing the house to visitor accommodation fire safety standards within a few weeks, and to a standard where the house can be signed off for its residential building consent by the end of winter.

SWORN at	)
by the said Fiona Graham	)
this day of May 2009	)
before me:–	)

A Solicitor of the High Court of New Zealand