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**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2012-404-1928

**UNDER THE
IN THE MATTER OF**

Judicature Amendment Act 1972

**An application for judicial review and
application for order for interim relief
pursuant to section 8**

BETWEEN

KIM DOTCOM

First Plaintiff

FINN BATATO

Second Plaintiff

MATHIAS ORTMANN

Third Plaintiff

BRAM VAN DER KOOJK

Fourth Plaintiff

AND

ATTORNEY-GENERAL

First Defendant

AND

**THE DISTRICT COURT AT NORTH
SHORE**

Second Defendant

CONFIDENTIAL AFFIDAVIT OF

17 September 2012

**CROWN LAW
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Affidavit of _____ in relation to GCSB Assistance to OFCANZ in "Operation Debut".

I, _____ affirm

1. That I hold the position of _____ within the GCSB and have personal knowledge of the matters addressed in this affidavit.

I understand that in this proceeding Detective Inspector Wormald declined, pursuant to s.70 of the Evidence Act 2006, to answer a question directed to the identity of the persons or entity noted in his notebook, and redacted.

The redacted entry refers to the GCSB and I attended the meeting referred to in the note.

The primary intelligence requirement levied on the bureau by OFCANZ was for technical assistance to determine the travel arrangements and likely locations at relevant times of persons who were to be located and arrested in relation to charges on which they had been indicted in the State of Virginia. The secondary intelligence requirement was for information which would allow an assessment to be made of the extent (if any) to which the individuals of interest were aware that they might be arrested. OFCANZ stressed that information concerning the operation was being extremely closely held for operational security reasons.

5. The persons of interest to GCSB in relation to satisfying these requirements were:

Name	Position	Citizenship	Normally residing in
Kim DOTCOM	CEO Megamedia Ltd	Germany, Finland	New Zealand, Hong Kong & USA
Mona AQUINO VERGA	Wife of Kim Dotcom	Philippines	New Zealand, Hong Kong & USA
Bram VAN DER KOLK	Customer Support	Netherlands	New Zealand & Netherlands
Junelyn VAN DER KOLK	Wife of Bram van der Kolk	Philippines	New Zealand & Netherlands
Finn Habib BATATO	Chief Marketing Officer & Vice President of Business Development	Germany	Germany
Mathias ORTMANN	Chief Technical Officer	Philippines	Germany & Hong Kong

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Sven ECHTERNACH	Secretary of Megaupload Head of Business Development	Believed to be German based on place of birth	Germany & Hong Kong
Julius BENCKO	Graphic Designer	Unknown	Unknown - but not believed to be in New Zealand
Andrus NOMM	Projects Planning, Development and Testing	Estonia	Estonia & Turkey

6. Other persons who were identified as being New Zealand citizens or permanent residents were identified as persons of interest to OFCANZ. OFCANZ was informed that the communications of these persons could not lawfully be intercepted under the Government Communications Security Bureau Act 2003 ("the GCSB Act").
7. Prior to the Bureau agreeing to undertake interception operations, I was informed by OFCANZ that all persons listed in paragraph 5 were foreign persons (as the expression "foreign person" is defined in section 4 of the GCSB Act).
8. Accordingly, and in reliance on this information (which throughout the period during which our interception operations were conducted I believed to be accurate), communications from and between those individuals were intercepted. Interception operations were conducted between 16 December 2011 and 20 January 2012 and information of relevance to the OFCANZ request was passed on to OFCANZ staff.
9. The information transferred to OFCANZ related solely to the intended movements of those individuals listed at paragraph 5 and the "atmospherics" within the group as an indication of whether they were aware of Police operations against them, and was provided in support of the planned arrest operation for the purpose of ensuring the safety of New Zealand Police staff involved in the operation. No information was reported to OFCANZ relating to the offences alleged to have been committed by any of the individuals listed in paragraph 5.
10. The interception operations did not involve any activity referred to in section 15 of the GCSB Act.
11. The Bureau considered that the circumstances of the offending as alleged, namely the theft of intellectual property causing multiple millions of dollars loss to the owners of that intellectual property, and the potential risks associated with the arrest operation, engaged ss.8(1)(e)(ii)(B) and 8(2)(b) and (c) of the GCSB Act (assisting a public authority in relation to protecting the safety of persons and supporting the prevention or detection of serious crime).
12. Section 14 of the GCSB Act directs that the Bureau may not intercept the communications of a person who is either a New Zealand citizen or a permanent resident.

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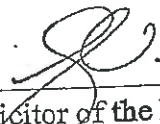
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13. As stated in paragraph 7, the question of the residence status of the persons of interest was raised with OFCANZ during initial discussions to determine whether or not the GCSB was legally able to provide the assistance requested. The Bureau was advised that none of the relevant persons had New Zealand citizenship, or were permanent residents.
14. The GCSB acted in reliance upon that advice. At all times when their communications were being intercepted, the GCSB believed that the relevant persons were foreign. If the Bureau had known otherwise, interception operations would not have been undertaken.
15. This advice subsequently proved, however, to be incorrect. In response to a query made by a GCSB colleague at my direction to OFCANZ on 20 February 2012, after interception operations had been completed, and I had become aware of media reports that Mr Dotcom was a New Zealand resident, I learned on 22 February that Immigration NZ had advised OFCANZ (who had not passed on the information to GCSB), that Mr Dotcom and his family and Mr van der Kolk and his family were in fact persons holding residence class visas under the Immigration Act 2009.
16. The definition of 'permanent resident' in the GCSB Act includes a person holding a residence class visa.
17. Accordingly the interceptions in relation to those persons was not authorised by the GCSB Act.
18. This occurrence will be reported to the Inspector-General of Intelligence and Security.

Affirmed

At Wellington this seventeenth day of September 2012

Before me


A Solicitor of the High Court of New Zealand

G. C. Warren