
IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2012-404-1928

UNDER THE	Judicature Amendment Act 1972
IN THE MATTER OF	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 KOLK Fourth Plaintiff
AND	ATTORNEY-GENERAL First Defendant
AND	THE DISTRICT COURT AT NORTH SHORE Second Defendant

AFFIDAVIT OF IN RELATION
TO GCSB INVOLVEMENT IN OPERATION DEBUT

22 October 2012

CROWN LAW
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I, _____, of Wellington, solemnly and sincerely affirm:

1. I am an employee of GCSB.
2. I have read the affidavit of Detective Inspector Wormald, sworn on 19 October 2012, and I will make reference in this affidavit to exhibits annexed to the Inspector's affidavit. I am adopting this course because I have returned to New Zealand from United Kingdom, where I have been for personal family reasons, and to which I must return on 22 October 2012.
3. On 14 December 2011 I attended a meeting at the offices of OFCANZ. The purpose of the meeting was twofold – to brief relevant Ministries on Operation Debut and, after officials from the other government agencies had left, to seek assistance from the Bureau in gathering information on named targets who were to be arrested in New Zealand in relation to US charges.
4. The briefing given to all agencies included details of the nature of the alleged criminal activity under investigation and some data of a biographical nature about the suspects, including nationality and in some cases residential addresses.
5. In the second part of the meeting Detective Inspector Wormald gave specific parameters of the request for assistance. He explained that New Zealand Police had a range of people they planned to arrest, including Kim Dotcom and Bram Van der Kolk. They were aware that Mr Dotcom would throw a birthday party which it was thought would be attended by other suspects currently offshore.
6. I recall that there was mention of an international dimension to this planned operation and a need to ensure that any arrests in New Zealand had to be carried out in a manner that prevented the possible destruction of evidence or movement of bank assets that were to be seized.
7. The information that the Bureau was asked to acquire was directed to the travel plans of the persons of interest and the question of whether there was anything to indicate risk to the Police in executing the arrest warrants. We were specifically told that there was no requirement for further evidence of the alleged criminality. As to the protection of the Police, we sought legal advice

on return to the Bureau. The Bureau's legal advisor confirmed that we could provide such support within the provisions of the GCSB Act 2003, to protect the safety of any person and in support of the prevention or detection of serious crime.

8. I have previously filed an affidavit in this case dated 17 September 2012. I refer to that affidavit. In it, I said that I was informed by OFCANZ that all persons listed in paragraph 5 of that affidavit were foreign persons, and that the Bureau was advised that none of the relevant persons had New Zealand citizenship, or were permanent residents and that the GCSB acted in reliance upon that advice. I wish to clarify what I meant.
9. I cannot recall the detail, but I attended the meeting knowing nothing about the various persons covered in the brief, and left the meeting confident that some of the persons mentioned, including Mr Dotcom and Mr van der Kolk, were targetable as "foreign persons". That is, they were neither New Zealand citizens nor permanent residents. I accept that OFCANZ may not have informed me of Mr Dotcom or Mr van der Kolk's exact New Zealand immigration status. The correct position is that from the information available at that meeting, my understanding was that none of the persons of interest was a protected person within our compliance regime.
10. Questions relevant to the immigration status of the main targets were raised during the meeting on 14 December 2011. I cannot recall whether this was during the briefing itself, or afterwards in the separate session with Detective Inspector Wormald, or during both. However, as it is fundamental to the use of the Bureau's interception powers that an intended target is identified as "foreign", I am sure that I would have raised the question regarding immigration status. I was aware from the briefing that both Mr Dotcom and Mr van der Kolk resided in Auckland. That fact alone, however, did not at that stage cause me any particular concern. The GCSB compliance regime is concerned about whether an individual is a New Zealand citizen or permanent resident of New Zealand, not their physical location. A New Zealand citizen or permanent resident living outside of New Zealand remains a protected person. At that time, that a person held a New Zealand residence visa would not in my

mind have amounted to that person being identified as a permanent resident of New Zealand.

11. I had asked for any supporting documentation to be forwarded that OFCANZ thought would assist GCSB in carrying out its task. By this I mean information to assist intelligence gathering. Following the meeting at OFCANZ, I am aware that the Police forwarded documents that, relevantly, included a draft affidavit to support an application for search warrants to be applied for as part of Operation Debut. A copy of this document was forwarded to me, but it is my recollection that I did not read it. There was no indication it contained any relevant information about Mr Dotcom or Mr van der Kolk's immigration status. Any information of the nature we had sought would be considered the GCSB team assigned this task.
12. The operating procedures of the Bureau require a formal request known as a Request For Information (RFI). That document [Exhibit F to the redacted affidavit of Detective Inspector Wormald dated 19 October 2012] it appears was completed and forwarded on 16 December 2011. There was an additional oral request from the OFCANZ intelligence group for information about "atmospherics" of the group, specifically, any suspect awareness of Police's imminent arrest operations, which was added on 17 January 2012. I was absent from New Zealand at the time and was advised later of this additional requirement.
13. On 16 December 2011, following the receipt of the RFI the Bureau's legal advisor approved the assistance request. At that stage, and throughout the operation, no GCSB employee involved in Operation Debut raised concerns based on information they had seen that protected persons were being targeted. This confirmed in my mind that there was no issue with the targeting of the individuals concerned.
14. The GCSB operation resulted in nine reports being made available to OFCANZ. Unless the information acquired by GCSB was included by the request in the RFI or the later addition on 17 January 2012, it was not passed on to OFCANZ. I have seen the redacted information reports (IRs) attached as Exhibits HH to PP to the affidavit of Detective Inspector Wormald dated 19 October 2012 and confirm that those are the IRs, and the only IRs, that

GCSB provided in relation to Operation Debut. I am satisfied that the redacted IRs correspond to the information sent in the original IRs.

15. On 16 February 2012 there was a debriefing meeting between the relevant OFCANZ officers and those from GCSB. It may have been as a result of this debriefing, or because of repeated references in the media referring to Mr Dotcom as a New Zealand resident, I felt that it was necessary to revisit the question of his immigration status, to determine the significance, if any, of these media references. Compliance is an ongoing obligation. Having received authority from the Bureau's legal advisor to approach OFCANZ for further advice, a request for that advice was made on 21 February 2012. [Exhibit Q, page 357, of the affidavit of Detective Inspector Wornald dated 19 October 2012].
16. An answer was received on 22 February 2012, OFCANZ having approached Immigration for advice. Included in the response was information that as at 18 November 2010 residence visas had been issued to Mr Dotcom and his family, and as at 2 December 2011 a residence visa had been issued to Mr van der Kolk [Exhibit Q, pages 226-230, and 249-252, of the affidavit of Detective Inspector Wornald dated 19 October 2012].
17. As a follow up action, I reported this information to the Bureau's legal advisor. The legal advisor confirmed that there was no compliance issue arising from Mr Dotcom or Mr van der Kolk's residence status.

18. I have reviewed Detective Inspector Wormald's affidavit dated 19 October 2012. I refer in particular to those paragraphs regarding the meeting on 14 December 2011. I did not keep a record of that meeting and Detective Inspector Wormald's account of that meeting may well be right. For me, I had a clear idea of what amounted to a permanent resident, and therefore a protected person, and I believed Mr Dotcom or Mr van der Kolk were not protected persons.

AFFIRMED)
at Wellington this day of)
 22 October 2012)
before me:)

A Solicitor of the High Court of New Zealand