

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

CIV-2006-485-2065

BETWEEN

DONALD THOMAS BRASH, of Auckland,
Member of Parliament

Plaintiff

A N D

JOHN DOE, address and occupation unknown

First Defendant

A N D

JANE DOE, address and occupation unknown

Second Defendant

MEMORANDUM OF COUNSEL FOR PLAINTIFF

Dated: 24 November 2006

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MAY IT PLEASE YOUR HONOUR:

1. The purpose of this memorandum is to request that the interim injunction and related orders dated Thursday 16 November 2006 granted on the plaintiff's application against unidentified defendants be rescinded. The reason why the plaintiff seeks to have the orders rescinded at this time is in order to avoid their continuing application to a book written by Mr Nicky Hager entitled "The Hollow Men".
2. When application was made to this Honourable Court on an ex parte basis on 16 November 2006 the existence of Mr Hager's book was not known to the plaintiff, his solicitors or counsel. The first notice which the plaintiff had of the existence of this book was from a press release made by or on behalf of Mr Hager on Tuesday 21 November 2006.
3. Details of the contents of the nature and general contents of the "The Hollow Men", including copies of the cover, contents pages, foreword and preface, were then distributed by Mr Hager at a press conference in Wellington on 21 November. Furthermore, although copies of the book have not been distributed to retail outlets, it is apparent from statements by media organisations or their staff that several copies of the book have already been put into circulation.
4. This has resulted in the bizarre scenario, as demonstrated on "*Campbell Live*" on TV3 at 7pm on Thursday evening 23 November, where the plaintiff, who has not read the book, is being asked to comment on the book by a journalist who states that the journalist has read the book.
5. As a consequence of the substantial level of publicity that has attended the fact of Mr Hager's book, its publicised contents and the publisher's assessment that its sale would offend the interim injunction order, the situation has now been reached where it is necessary for the plaintiff and the National Party to be able to respond to the allegations contained or perceived to be contained in the book.

6. Consequently the plaintiff has publicly stated that he would be willing to take steps to facilitate Mr Hager's distributing "The Hollow Men" without offending the interim injunction. To that end there have been concerted attempts by the legal advisers, as illustrated by the news item annexed marked "A", to find a way to do that but without depriving the plaintiff of the benefit of the interim orders in relation to stolen emails additional to the emails referred to in "The Hollow Men".
7. However the conclusion has been reluctantly reached by the plaintiff that in order to be able to procure the book and to respond to its contents, as he is being asked to do by journalists, it would be necessary for the plaintiff to seek to have the interim injunction orders lifted.
8. Having come to that determination and because Mr Hager is anxious to distribute the book without any further delay, the plaintiff is now taking this step of requesting that this Honourable Court rescind the interim injunction and related orders forthwith. The plaintiff recognises that as a consequence of his so doing any ultimate relief available to him in the proceeding would inevitably be limited to pecuniary remedies.
9. Mr Hager is not a party to the proceeding, he not having been served. However counsel can advise the Court that Mr Hager wishes to have the interim injunction and related orders discharged. Appearances and applications to rescind the interim injunction and related orders have been filed by 2 media organisations. Counsel considers that neither they nor any other person could be detrimentally affected by the plaintiff's present request. Any consequential matters could be addressed at the time of the fixture scheduled for 28 and 29 November 2006.
10. Counsel will be available at Your Honour's convenience to address any matters which Your Honour might wish to be considered.

DATED at Wellington this 24th day of November 2006.

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B W F Brown QC
Counsel for the Plaintiff

