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

**CIV-2014-485-011344**
**[2014] NZHC 3293**

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| UNDER | the Judicature Amendment Act 1972, Part 30 of the High Court Rules, the Bill of Rights Act 1990 and the Search and Surveillance Act 2012 |
| IN THE MATTER OF | an application for judicial review |
| IN THE MATTER OF | a search warrant issued by Judge I M Malosi of the Manukau District Court on 30 September 2014 |
| BETWEEN | NICOLAS ALFRED HAGER<br>Applicant |
| AND | ATTORNEY-GENERAL<br>First Respondent |
| | THE NEW ZEALAND POLICE<br>Second Respondent |
| | THE MANUKAU DISTRICT COURT<br>Third Respondent |

Hearing: 12 December 2014

Counsel: J G Miles QC and F E Geiringer for applicant
B J Horsley and K Laurenson for first and second respondents
K Muller for third respondent

Judgment: 17 December 2014

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**RESERVED JUDGMENT OF DOBSON J**
**(Discovery application and procedure for cloning)**

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[1] In this application for judicial review, the applicant (Mr Hager) alleges that steps taken by the second respondent (the Police):

- first, in deciding to apply for a search warrant in respect of Mr Hager's premises;

- secondly, in applying for the warrant; and

- thirdly, executing the warrant at his Wellington address

are reviewable.

[2] It is pleaded on behalf of Mr Hager that each of those steps were unlawful or unreasonable in respects entitling Mr Hager to declarations that those steps were unlawful, and for orders for the return to him of property seized in the execution of the warrant. As an alternative to prompt return, Mr Hager seeks damages under s 21 of the Bill of Rights Act 1990 by virtue of the continued detention of his property.

[3] The relevant actions are alleged to have occurred in response to a complaint received by the Police that electronic records maintained by a blogger, Mr Cameron Slater, had been unlawfully accessed (hacked) without Mr Slater's permission. A book entitled "Dirty Politics", written by Mr Hager and published on 13 August 2014, contained material that reflected the product of the alleged hacking of Mr Slater's electronic records. For this reason, Police inquiries in relation to Mr Slater's complaint included a focus on Mr Hager. In the course of investigating the complaint, the Police decided to apply for a warrant to search Mr Hager's premises in an attempt to obtain information that would identify, or help the Police identify, the person who had hacked Mr Slater's electronic records.

[4] On 30 September 2014, District Court Judge I M Malosi issued the warrant sought by the Police. Judge Malosi was located at the District Court at Manukau at the time, hence the inclusion of the third respondent as a party to the proceeding.

[5] On 2 October 2014 the warrant was executed by a search conducted at Mr Hager's Wellington property. A range of items was seized, including physical records, computers, CDs and USB sticks used for storing electronic information. Those items have been sealed and lodged with the Court, without the Police

undertaking any analysis of their contents. The Police have proposed separate proceedings to resolve appropriate protocols for differentiating information coming within the categories sought in the warrant from other information or items to which access would also be possible by virtue of the scope of items seized. That sorting process would also be expected to separately identify material in respect of which privilege of any sort could be claimed.

[6] Mr Hager's application for judicial review is set down for a substantive hearing in March 2015. Mr Hager has raised concerns at what he considers to be inadequacies in the disclosure provided by the respondents, and these concerns have been pursued as a matter of urgency to facilitate orderly preparation for the substantive hearing. It is agreed that a prompt judgment is required.

[7] Mr Hager and the Police also disagree on arrangements for cloning all the electronic records seized pursuant to the warrant. I heard submissions on the competing proposals, and address them later in this judgment.

**Requests for further disclosure**

[8] In pursuing a greater level of disclosure, requests have been made on Mr Hager's behalf under both the Official Information Act 1982 (OIA) and the Privacy Act 1993 (PA), as well as contending for an obligation on the Crown to provide more detailed discovery in terms of the High Court Rules, or on account of a common law duty of candour.

[9] That triple-barrelled approach is perhaps understandable, given that there is generally a constraint on the scope of discovery obligations in judicial review, recognising that a respondent's discovery obligations are more confined in judicial review than generally applies in civil litigation.

[10] In the circumstances of this judicial review, I consider that the test for discovery of documents in the litigation should govern the whole analysis of the scope of the Crown's obligations to provide documents. Challenges to the lawfulness of the exercise of statutory powers arise in very diverse contexts. Here, the context is the investigation of a complaint of criminal activity. At issue is the

nature of initiatives undertaken by the Police to test whether documents or information exist that might enable them to make out whether an offence had occurred and, if so, who had committed it. Generally, challenges to the lawfulness of the Police conduct in this context arise in the course of the criminal proceedings that ensue when individuals charged with offences as a result of a warranted search challenge the admissibility of evidence gathered in the course of executing the warrant. Criminal disclosure obligations on the Police apply in that context.

[11] The high-water mark of the case for Mr Hager as sketched by Mr Miles QC is that the Police ought not to have pursued an application for a warrant at all, knowing that all the information at Mr Hager's premises in which they would be interested would be subject to a claim for journalistic privilege, as recognised in s 68 of the Evidence Act 2006. Mr Miles described the case as proceeding from that proposition to a qualified one that asserts an obligation on the Police, in deciding whether to apply for a warrant, to evaluate the competing right to journalistic privilege against other factors.

[12] Mr Miles cited the observations of the Court of Appeal in *Television New Zealand Ltd v Attorney-General*.[1] As summarised in the headnote to that case, guidelines affecting applications for search warrants where material sought might be covered by journalistic privilege, include that warrants should not be used for trivial or minor cases. Only in exceptional circumstances, where it was truly essential in the interests of justice, should a warrant be granted or executed if there was a substantial risk it would result in the "drying up" of confidential sources of information for the media. It will be argued that such a risk is present in this case.

[13] The case for Mr Hager will include the proposition that those guidelines impose an obligation on the Police in considering whether this was an appropriate case in which to apply for a warrant.

[14] Mr Miles also foreshadowed reliance on the High Court decision in *Police v Campbell*.[2] That case involved a television journalist obtaining details of the theft of

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1 *Television New Zealand Ltd v Attorney-General* [1995] 2 NZLR 641 (CA).
2 *Police v Campbell* [2010] 1 NZLR 483 (HC).

medals from the Waiouru Army Museum on condition that the informant interviewed, who had been a participant in the crime, remained anonymous. Randerson J recognised that the protection of the journalistic privilege provided by s 68(1) may be outweighed, given the judicial discretion under s 68(2). However, he ruled that the starting point was to recognise the protection and that the presumptive right to that protection is not to be departed from lightly, but only after a careful weighing of each of the statutory considerations. Among those considerations are other possible means of obtaining the information sought, and the relative importance to the prosecution case of the information sought.[3]

[15] Mr Miles also foreshadowed reliance on the Supreme Court's decision in *Dotcom v United States of America*, which considered the scope of disclosure obligations on a State requesting extradition, for the purposes of an eligibility hearing in New Zealand.[4] The same level of utility in an analogy with the reasoning in that context may not be made out. However, Mr Miles' point was that the judgment reflected an expectation that a person facing extradition has to be given an effective opportunity to answer the existence of a prima facie case, and the requesting State's disclosure obligation extends to evidence that might seriously undermine or detract from the evidence on which the requesting State relies.[5]

[16] In the present context, if the Crown holds documents that either support the claimed lawfulness and/or reasonableness of the challenged steps, or on the other hand would assist Mr Hager in making out the claimed unlawfulness or unreasonableness of steps taken, then such documents are prima facie discoverable.

[17] I do not see any scope for orders against the respondents in this judicial review that would require disclosure of documents beyond those that are discoverable in accordance with the Court rules. Requests under the OIA have their own process under that Act and it is inappropriate to pre-empt that in any way. In any event, the Court does not have jurisdiction to review a refusal to provide information under the OIA until there has been an Ombudsmen's decision in relation to any complaint Mr Hager pursues.

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3 At [93], [96] and [97].
4 *Dotcom v United States of America* [2014] NZSC 24, [2014] 1 NZLR 355.
5 At [54] per Elias CJ and [152] per McGrath and Blanchard JJ.

[18] As to the PA, Mr Geiringer relied on s 11 as rendering the right to access personal information that is provided for in principle 6, subclause (1) of the PA as a right directly enforceable by the Court. No authority was cited for the right to access and obtain personal information as extending the obligations on the Crown to provide discovery, when the Crown is sued in civil proceedings. Without excluding all prospect of such rights applying in other circumstances, I am satisfied that resort to the right to personal information is neither appropriate nor necessary as a part of the disclosure process in the present case.

[19] The submissions for Mr Hager placed emphasis on the duty of candour imposed on the Crown when responding to judicial review challenges. The majority of the decisions cited for this proposition were from the English Courts.[6] A contested discovery obligation may arise in a somewhat different context in that applicants for judicial review in England must first be granted leave to bring a judicial review challenge. That is not to say that New Zealand Courts should have any lesser expectation of candour, but it supports my approach that the obligation of candour on a decision-maker is likely to affect the scope of the discovery obligation but not impose an obligation of a different type.

[20] The New Zealand authority cited for the obligation of candour was the decision of Miller J in *Henderson v Privacy Commissioner*, which addressed the point in these terms:[7]

> Ms Gwyn [counsel for the statutory decision-maker] also accepted that, as a general principle, decision-makers have a duty to disclose to the Court material relevant to a decision being judicially reviewed. I agree. The Court normally expects public bodies to disclose relevant material, which is one reason why discovery is not required as a matter of course under the Judicature Amendment Act, and an adverse inference may be drawn where a decision-maker has failed to do so. …

[21] The relevant focus in the application for judicial review is the lawfulness of the steps taken. If the Police hold personal information about Mr Hager that is not relevant to the three steps that Mr Hager seeks to challenge, then irrespective of

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6 *Belize Alliance of Conservation Non-Governmental Organs v The Department of the Environment* [2004] UKPC 6 at [86] and *Banks v Secretary of State for the Environment, Food and Rural Affairs* [2004] UWHC 1031.

7 *Henderson v Privacy Commissioner* HC Wellington CIV-2009-485-1037, 29 April 2010 at [108] (citations omitted).

other legitimate interests Mr Hager might have in accessing such personal information, it would not be appropriate to order the Police to discover it in this proceeding. It is more appropriate that the parties' obligations be confined conventionally to a liberal analysis of the issues that arise from the pleading.[8] Although the authority cited for that formulation of the discovery obligation pre-dates a narrowing of the test for discoverable documents in the High Court Rules, it persists as a relevant definition for the scope of the obligation in this case.

[22] Discovery of any more than the documents already provided on behalf of the Police was firmly resisted by Mr Horsley on the basis that the first and third steps in the Police action that are subject to challenge are not justiciable. Mr Horsley submitted that the steps taken up to and including the preparation of an application for a warrant are purely internal administrative steps that are not separately justiciable. The lawfulness of the Police conduct is measured only by any challenge to the warrant if it was issued. Arguably, the adequacy of the work done by Police prior to applying for a warrant is irrelevant because the application has to stand or fall on its own terms. If all relevant circumstances and considerations are not addressed adequately, then the Police risk the issuing officer declining to issue the warrant.

[23] Mr Horsley submitted that it would be novel for steps in the Police investigative process leading to an application for a search warrant to be the subject of challenge by way of judicial review. Not only would it be likely to frustrate the present criminal investigation, but it would also create an unfortunate precedent that is likely to hamper the course of criminal investigations generally. Further, it would cut across established procedures that are perfectly adequate for challenging the lawfulness of a warrant.

[24] Mr Horsley made the point that the statement of claim does not specify the statutory powers, the exercise of which Mr Hager seeks to review. It is, however, tolerably clear that the relevant powers are those which Police officers have under the Search and Surveillance Act 2012 (the SSA) to apply for warrants. Generally,

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[8] *Wellington International Airport Ltd v Commerce Commission* HC Wellington CP151/02, 25 July 2002 at [40].

accountability for the reasonableness of the exercise of those powers occurs if the warrant is executed and the Police signal an intention to rely on material obtained as evidence in criminal proceedings.

[25] Mr Horsley did not go so far as to suggest that there is anything in the nature of a privative provision in the SSA that precludes steps prior to an application for a warrant being subject to challenge by way of judicial review. Mr Horsley foreshadowed the same analysis for excluding from judicial review the steps taken subsequent to the issue of the warrant, in relation to the manner of its execution. However, he did submit that the expectations as to process relied on by Mr Hager from cases such as *Television New Zealand Ltd* and *Campbell* pre-date the new code of conduct for such matters as provided by the SSA.

[26] In response to Mr Miles' outline of the arguments for Mr Hager, Mr Horsley disputed that the Police could have any obligation to consider guidelines constraining applications for a warrant because some of the material sought might be subject to journalistic privilege. In particular, he rejected the prospect of guidelines from cases prior to the coming into effect of the SSA. He foreshadowed reliance on the provisions of s 136 of the SSA, which provide limitations on various forms of privilege, including the rights conferred on a journalist under s 68 of the Evidence Act to protect certain sources. Section 136(2) of the SSA provides:

> **136 Recognition of privilege**
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> …
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> (2) For the purposes of this subpart, no privilege applies in respect of any communication or information if there is a prima facie case that the communication or information is made or received, or compiled or prepared,—
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> (a) for a dishonest purpose; or
>
> (b) to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence.
>
> …

[27] It is likely that the Police will argue that the procedures available to them under the SSA obviate the need for them to consider whether the prospect of

privilege applying to items seized pursuant to a warranted search should affect the decision to seek a warrant. Instead, the issue of how to deal with any privileged material should be the subject of arrangements for its consideration after the warrant is executed, and all the circumstances particular to the case are known.

[28] Some or all of these arguments on behalf of the Police may well prevail. However, at the moment, the scope of the discovery obligation on the Police cannot be determined on the assumption that they will. To do so would prevent Mr Hager adequately preparing for a judicial review challenge on the scope that is currently in issue on his statement of claim.

[29] In the absence of an application to strike out components of the statement of claim, it is not appropriate to assess the scope of relevant documents by reference to the issues raised by the pleadings, in a way that excludes issues that are currently alive on the pleadings. To do so would be to summarily exclude argument that the Court can review the lawfulness and reasonableness of steps taken by Police officers in deciding to pursue, and preparing, an application for a warrant.

[30] If indeed the steps before and after the issue of the warrant are held not to be justiciable, then Mr Horsley's concerns at provision of discovery in this case being an inappropriate precedent for the scope of access to internal Police documents would fall away. That is because the scope of discovery obligation reflects the scope of issues raised by the statement of claim that must currently be treated as tenable, but which would be recognised as untenable if the arguments Mr Horsley foreshadows are successful.

**Constraints on inspection of discovered documents**

[31] Case-specific constraints on access to the documents that I will order the Police to discover are justified. The Police could not reasonably have expected that their internal documents would be discoverable in civil proceedings as has now occurred. There is an important public interest in not compromising the confidentiality of either the specific investigation of Mr Slater's complaint, or more generally the nature of investigative techniques utilised by the Police in undertaking such inquiries. Respect for confidentiality of Police documents is warranted so as

not to prejudice the specific inquiry, or more generally so as not to compromise the efficacy of investigative techniques.

[32] To address such confidentiality concerns, Mr Hager's counsel volunteered that access to confidential Police documents that the Crown is required to discover would be restricted only to counsel retained on Mr Hager's behalf in the case. That is not an unusual constraint on access to confidential documents and it is appropriate in the context of this case. A condition of making discovery orders is that access to the further discovered documents will be confined to Messrs Miles, Geiringer and Price. That is on the explicit basis that each of them, as an officer of the Court, is to use the documents only in preparing and arguing this case, and each is forbidden to disclose content, or to discuss it other than among the three of them.[9]

[33] That constraint will be subject to the reservation of leave for counsel to apply to divulge particular content to their client or to experts, where the inability to do so materially impedes the taking of instructions in the preparation of Mr Hager's case.

[34] A residual aspect of the protection of confidentiality in respect of the documents to be discovered is the prospect of limited redactions. The need to do so should take account of the fact that access to the documents will be restricted to counsel on a confidential basis. Redactions can only be justified where even disclosure to counsel on a confidential basis still gives rise to the prospect of compromising either the success of the specific Police investigation into Mr Slater's complaint, or more generally if it would risk compromising the integrity of Police investigative methods. The prospect of such redactions is acknowledged as a concept only. It ought to be unnecessary, and I reserve leave to Mr Hager's counsel to apply to review the justification for any redactions, if differences are unable to be resolved.

**The categories of further disclosure sought**

[35] The categories of documents sought were specified in an appendix to a letter from Mr Geiringer dated 5 December 2014. Several of the requests were in the form

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[9] That constraint is also the usual requirement, and is always implicit: see *Harman v Secretary of State for the Home Department* [1983] AC 280.

of interrogatories, asking whether steps that may have occurred in the course of seeking the warrant, and then executing it, had in fact occurred. In other respects, the terms of the requests anticipated that those responding would create additional documents to answer them. Those are inappropriate as requests for discoverable documents.

[36] In oral argument, Mr Miles focused more narrowly on the categories of contemporaneous documents that he contended would have been prepared at relevant times, and which Mr Hager claims are discoverable by the Crown.

[37] Mr Horsley's rejoinder on this point was that the request constituted a fishing expedition. He invited an analogy with the approach to subpoenas that had been issued against two senior analysts at the Electricity Commission, whose work had contributed to the materials before that Commission when it decided to approve the construction of a transmission line by Transpower.[10] In that case, MacKenzie J treated the prospect of evidence from the analysts about their work as irrelevant, when the lawfulness of the Commission's decision had to be determined on the scope of the materials that the Commission had before it when it made the relevant decision. Implicitly, Mr Horsley was treating the work done by the Police prior to settling the terms of the application for a warrant in this case as similarly irrelevant to the lawfulness of the grounds on which that application was made. Those grounds, on his analysis, were to be confined to the content of the application itself.

[38] The difficulty with that analogy is that a component of the present judicial review relates to the lawfulness of the discrete work in assessing whether the Police would apply for a warrant, as distinct from settling the terms on which they would seek to justify the necessity for a warrant in the application.

[39] The documents that will be relevant to the contested issues on the pleadings are as follows:

(a) In the period up to the time at which the application for a search warrant was submitted to a Judge at the Manukau District Court:

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[10] *New Era Energy Inc v Electricity Commission* HC Wellington CIV-2007-485-2774, 9 May 2008.

(i) Any documents that specifically record considerations as to whether an application for a search warrant in relation to Mr Hager's premises was warranted.

(ii) Any documents considering the prospect of claims by Mr Hager to resist disclosure of the content of documents on the basis of journalistic privilege under s 68 of the Evidence Act.

(iii) Any documents addressing any of the topics covered by guidelines for the issue of a warrant where the material likely to be seized would, or would be likely to, include material for which journalistic privilege under s 68 was likely to be asserted. The scope of such purported guidelines are as reflected in the *Television New Zealand* and *Campbell* decisions discussed in [12] and [14] above.

(iv) Any documents that referred to procedures under the SSA or otherwise for dealing with material seized, in the event that claims to any form of privilege from disclosure were made in respect of it.

(v) Any document recording the prospects of discovering the identity of the hacker from a source other than Mr Hager.

(b) Documents in relation to the execution of the search warrant at Mr Hager's property:

(i) Job sheets or other contemporaneous records in respect of the search created by Police officers who attended the search, either in the course of the search or shortly thereafter.

(ii) Any documents created in anticipation of the warrant being executed that dealt with how that was to occur.

[40] The above categories deal with the first and third steps which Mr Hager seeks to challenge. I can see no justification for additional discovery in relation to the second stage, namely the application for, and issuing of, the warrant. The lawfulness and reasonableness of the application for the warrant must stand or fall on the terms as submitted to the issuing officer. The application has already been disclosed in a redacted form. I direct that counsel for the Police are to review the extent of redactions so that the only redactions remaining are to protect the anonymity of third party informants, or other matters in relation to the investigation, the disclosure of which to counsel for Mr Hager is likely to materially compromise on-going aspects of the investigation.

[41] I heard specific argument as to whether Mr Slater's complaint ought to be disclosed. It should be subjected to the same test for relevance as I have discussed above. If it contains, for example, information as to possible alternative sources (to Mr Hager) of information that would identify the hacker, then such parts of the complaint are to be disclosed. If there is no such content, then there should be formal verification of that as the reason for not disclosing any part of it.

[42] The Police should also provide a list of any discoverable documents that have been withheld because of concerns at prejudice to the on-going investigation, or mode of conducting such investigation, as contemplated in [34] above, with the particular grounds for withholding being specified. Where documents are discovered in part, then the list ought to identify also the grounds relied on for partial redactions that have been made.

**Disclosure sought from the third respondent**

[43] Mr Hager sought disclosure from the Manukau District Court of a copy of the file he anticipated would have been maintained by the Court in relation to the application for, and issue of, the search warrant. He also sought a document setting out Judge Malosi's reasons for issuing the search warrant.

[44] Both requests are misconceived. Requests made to any person who is authorised as an issuing officer for the purposes of warrants under the SSA are not

treated as proceedings by the Registry of any courts to which they might be delivered.

[45] Similarly, the response on behalf of the District Court is that there is no document in existence which records the Judge's reasons for issuing the search warrant. That is entirely consistent with standard practice in which an issuing officer requested to consider an application for a warrant simply grants or declines the application. There is accordingly no discoverable document of that category either.

**Arrangements for cloning the electronic records**

[46] On 6 November 2014, Collins J issued a minute including directions as to how the cloning of electronic records seized by the Police was to occur. That minute reserved leave to parties to apply to the Court to vary the terms of the directions that were made. The directions were for the cloning to occur at the Electronic Crime Laboratory (ECL) in Auckland. That is a Police facility and Mr Hager is concerned that cloning under the control of the Police provides inadequate assurance of protection of all of his data. Mr Geiringer indicated that the electronic files seized include some that address alleged corruption within the Police and Mr Hager is concerned that all of the data survive in its original condition.

[47] The existing directions provide for a nominee of Mr Hager to observe the cloning to monitor the integrity of how it is done. A further concern now raised for Mr Hager is that that would incur an inordinate cost for him which he is unable to meet.

[48] Instead, Mr Hager now proposes that the cloning be done by a Mr Daniel Ayres from a firm called Elementary Solutions. No sufficient explanation was offered as to why cloning by Mr Ayres would be substantially cheaper than having a nominee of Mr Hager observe cloning at ECL.

[49] Mr Hager has also raised the prospect that the cloning of all electronically stored data not occur immediately, but that the cloning be confined to those items in respect of which he has an urgent need. It ought to be possible for that narrowing of the cloning task to occur with the cloning being done at ECL.

[50] The Police resist alterations to the directions previously made, and in particular would not consent to the cloning being under Mr Ayres' control. Mr Horsley advised that Mr Ayres is not considered appropriately neutral, having had involvement in the case, including for a third party media organisation. Mr Geiringer disputed that that was the case. He advised that Mr Ayres had been approached as a result of a recommendation from the New Zealand Law Society and not because of any prior connection with Mr Hager.

[51] Mr Geiringer finally indicated that if Mr Hager could not have the cloning process undertaken by an expert of his choosing, then he would rather defer incurring what was described as the greater cost of observing the cloning process at ECL. Instead, he would replace the computer equipment that has been seized from him at what he perceives to be a fraction of the cost of observing the cloning process at ECL. That would mean Mr Hager did not have access to his stored data until issues over its seizure are resolved.

[52] In light of continued Police opposition to allowing the seized material into the possession of an expert nominated and paid by Mr Hager, the scope for variation of the original direction is somewhat limited. The variation I raised, which was not immediately acceptable to Mr Geiringer, was to have the Court direct ECL to nominate one appropriately qualified expert who could complete all the cloning that is required, on the following terms. I would designate that identified individual as an officer of the Court to carry out the cloning at the Court's instruction. He or she would be required to undertake to the Court and the parties that he or she would complete all aspects of the cloning exercise without accessing any of the content of the electronic files. To any extent that the cloning process exposed the expert effecting it to any content, then such information gleaned would be retained strictly confidentially by that expert and no disclosures could be made without prior specific consent of a Judge. The expert would be required to describe to any expert nominated for Mr Hager the detail of the process to be followed, including safeguards adopted to prevent any disclosures. That expert would then be responsible for completing four copies of the cloned information, all four copies of which would be submitted to the Court for sealed custody, and the originals being

returned to Mr Hager. Thereafter, he or she would not be permitted to do any other work in relation to Mr Slater's complaint.

[53] As I discussed with counsel, it would be preferable for Mr Hager, in preparing for the judicial review, to have the seized information available to him. If he wishes to avail himself of a cloning process on terms as I have proposed, then his counsel should file a memorandum forthwith to enable the feasibility of my proposal to be confirmed. That would involve ECL identifying an appropriate expert and that person completing the undertakings prior to the cloning process being carried out.

[54] I reserve leave generally, both on the detail of the categories of documents I have defined as discoverable by the second respondent, and also on the detail of arrangements for cloning, if the proposal I have made is to be pursued.

**Timetabling orders**

[55] To facilitate preparation for the substantive fixture, during the hearing I proposed timetabling orders relative to hearing dates then set for 16 and 17 March 2015. Mr Geiringer was concerned that any such timetable would be too tight. I accordingly proposed that, if possible, the substantive fixture would be delayed by a week to be heard on 23 and 24 March 2015, in which event the majority of the steps in the timetable I proposed would also be delayed by a week. I confirm that the hearing will now be on *23 and 24 March 2015*.

[56] The consequent timetable is as follows:

(a) Discovery by the second respondent is to be provided by ***23 January 2015***.

(b) The applicant's affidavits in support of the judicial review are to be filed and served by ***20 February 2015***.

(c) The respondents' affidavits are to be filed and served by ***6 March 2015***.

(d) Any affidavits in reply for the applicant are to be filed and served by ***13 March 2015***.

(e) The applicant's submissions are to be filed and served by ***17 March 2015***.

(f) The respondents' submissions are to be filed and served by ***20 March 2015***.

**Dobson J**

Solicitors:
Bennion Law, Wellington for applicant
Crown Law, Wellington for respondents