

WELLINGTON REGISTRY

**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

**And in the matter of** A search warrant issued by Judge IM Malosi of the Manukau District Court on 30 September 2014

**Between** **N A HAGER**  
*Applicant*

**And** **HER MAJESTY'S ATTORNEY-GENERAL**  
*First Respondent*

**And** **THE NEW ZEALAND POLICE**  
*Second Respondent*

**And** **THE MANUKAU DISTRICT COURT**  
*Third Respondent*

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Affidavit of Bryce David Edwards

Affirmed: 31 March 2015

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I, Bryce David Edwards, university lecturer of Dunedin, do solemnly and sincerely affirm:

**Introduction**

1. I have been asked to provide expert evidence to assist the Court on matters relevant to an application for judicial review brought by Nicolas Alfred Hager in relation to a warrant issued to the New Zealand Police to search Mr Hager's residence and examine his documents and computer systems.

**Code of conduct**

2. I have read the code of conduct for expert witnesses set out in Schedule 4 of the New Zealand High Court Rules. I agree to comply with it.

**Background**

3. As part of my academic work and my media work, I read *Dirty Politics* and I have been following the consequences of its publication. I am therefore very familiar with the background to this case.

**Instructions**

4. I have been instructed that it will be relevant to the Court's assessment of this case for the Court to understand the impact of the search of Mr Hager's property on the ability of the news media to access sources of facts and to communicate facts and opinion to the public in the public interest. As part of that assessment, I understand that the Court will want to consider the public interest inherent in the publication of *Dirty Politics*.
5. I have been asked to draw on the research that I have been conducting to set out what consequences there have been from the publication of *Dirty Politics* that are relevant to an assessment of its public interest. I have also been asked to draw on my expertise as a political scientist to give my own view as to the level of public interest inherent in *Dirty Politics*.



6. For the purposes of this assessment, I have been asked to interpret “public interest” to mean those matters that are likely to have an impact on the public or a significant section of the public, such that they are legitimately concerned about it.

### **My qualifications**

7. I am a political scientist at the University of Otago, where I have been teaching and researching New Zealand politics since 2007. My scholarship on New Zealand politics relates mainly to political parties, public policy, and political communication. My recent research has focused on political scandals, digital politics (including the blogosphere), and the work of professional political party public relations experts (i.e. spin-doctors). The blogosphere is a term for the collection of blogs. A blog, short for web-log, is an online, self-published journal. It has become a common medium for the expression of political thoughts.
8. I have a PhD in Sociology from the University of Canterbury, which was on the history of political parties in New Zealand. I regularly participate in public debate about contemporary New Zealand politics via media interviews, and columns for various mainstream media outlets. These regularly include appearances on TV3 and TVNZ, interviews given on National Radio and Newstalk ZB and articles published in the New Zealand Herald.

### **Exhibits**

9. Attached and marked respectively as “BDE-1” and “BDE-2” are two paginated volumes of exhibits to this affidavit. I refer below to documents within these bundles as **Exhibit [volume number]/[page number]**.

### **The revelations of *Dirty Politics***

10. Nicky Hager says in *Dirty Politics* that the book came about when he was leaked correspondence and other electronic documents relating to Cameron Slater. Mr Slater created and operates a blog known as Whale Oil Beef Hooked located at [www.whaleoil.co.nz](http://www.whaleoil.co.nz) ("**Whale Oil**"). The Whale Oil site explains that the full name, Whale Oil Beef Hooked, is intended to be "said with an Irish accent". In other words, it is a play on "Well I'll be fucked".
11. Whale Oil is a mixture of news and commentary on politics and current events, and entertaining materials gathered from the internet. The commentary is generally right wing. Mr Slater's expressions of his opinions make extended use of invective and are frequently vitriolic. The site includes reader comments. These comments are said to be moderated, in other words that someone running the site vets their content and deletes them if they breach the site's rules. However, the reader comments are frequently extremely immoderate. They have in the past, for example, included people calling for the targets of Mr Slater's vitriol (and their families) to be shot.
12. The key revelations in *Dirty Politics* included that:
  - 12.1. senior members of the National government, including Cabinet ministers and people working in the Prime Minister's office, had been coordinating attacks on its political opponents with Mr Slater including by:
    - 12.1.1. providing Mr Slater with gossip to use to attack political opponents;
    - 12.1.2. assisting Mr Slater to publish material taken from the private parts of the Labour Party's computer system without authority;

- 12.1.3. assisting Mr Slater to make Official Information Act requests for documents that could be used to attack political opponents including information relating to the New Zealand Security Intelligence Service; and
  - 12.1.4. delaying the release of documents damaging to the government to mainstream media journalists while expediting release of the same documents to Mr Slater so that he could put a pro-government spin on their content first and deprive the journalists of a scoop;
- 12.2. Public Relations agents had been drafting posts for Slater to publish for payment under his own name for the benefit of their clients, including posts attacking:
- 12.2.1. scientists and health professionals on behalf of companies producing unhealthy products such as sugary food and drinks or tobacco;
  - 12.2.2. government policies on behalf of companies, eg tobacco and alcohol companies, who would be impacted by those policies;
  - 12.2.3. the products of a client's competitors; and
  - 12.2.4. unions in dispute with a client; and
- 12.3. a political advisor had been using Mr Slater to attack his clients' rivals for political offices, including:
- 12.3.1. a smear campaign against rivals within the National Party to Mark Mitchell's nomination as candidate for the safe National seat of Rodney before the 2011 election; and
  - 12.3.2. what appears to be a plan to blackmail the then leader of the Act Party and sitting MP, Rodney Hide, into resigning

to make way for Don Brash to assume leadership of that Party.

13. Many of the acts disclosed in the book are unlawful, some appear to be criminal, and some contradict previous public denials by senior politicians, including the Prime Minister.

**Overall view of the public interest of *Dirty Politics***

14. In my view, the *Dirty Politics* book epitomises a publication that deals with crucial issues of public interest. The revelations of the book go to the heart of how politics work in New Zealand. They show how politicians attempt to influence public opinion and debate, and how this has occurred in a surreptitious way that seeks to mislead the recipients as to the source of the opinions. This information in *Dirty Politics* has helped the public to understand better how politicians work and the nature of political communication (particularly through the media and blogosphere).
15. In any democracy it is important that politicians – and especially Cabinet ministers – uphold the public’s expectations of ethical behaviour. The Cabinet Manual states that ministers must operate with the “highest ethical standards”. The revelations in *Dirty Politics* cast doubt on whether senior politicians were keeping to such standards.
16. In my view, *Dirty Politics* helps us understand how political tactics are used, and the relationship between media, politicians, and bloggers. The result of the publication of the book is that we have a better informed public debate and society.
17. In short, my view is that *Dirty Politics* is a work of significant public interest. Indeed, I regard it as a work of public importance.
18. There is no one scientific way of measuring public interest. However, in my view, we can examine a range of indicia to get a sense of the public interest in any particular matter:

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- 18.1. the extent to which it is taken seriously by official agencies, the media, pundits, and academics;
  - 18.2. the degree to which it engendered debate by the public and the media; and
  - 18.3. whether the particular issues raised have current and ongoing significance to the wider public.
19. To explain how I reached my view on the public importance of *Dirty Politics*, I reflect below on how the book stands up to each of these possible measures.

**An assessment of the accuracy and validity of *Dirty Politics***

20. The revelations and arguments made in *Dirty Politics* have been the subject of significant scrutiny since publication. By and large, the book has withstood that public evaluation. It is widely viewed to have been accurate in the facts that it presented and the analysis of those facts.
21. There has been very little that has been disproved in the book. I think this is remarkable. No academic study of politics ever gets everything right.
22. I am aware that Mr Hager acknowledges that he ascribed the wrong gender to a peripheral character in the book. I am not aware of any major or material claim that has been shown to have been false.
23. Any publication of this kind will be based on both research and the interpretation of that research. Mr Hager has done very well in his presentation of both. It is usually difficult to separate out facts from their interpretation. The presentation of *Dirty Politics* makes it easy for a reader to see where Mr Hager has presented the facts, and where he is analysing those.
24. That separation of fact and interpretation is important in terms of accuracy and validity. It means that Mr Hager is not presenting his opinions as facts. The material presented as fact is taken from Mr Hager's

source material, with that source material cited. It also means that the reader is able to understand the basis of Mr Hager's opinions and to test the validity of his conclusions for themselves.

25. What is particularly unique about Mr Hager's book is that it is based around the actual communications of the subjects of the book. In my view, these communications are presented in an appropriate manner. Overall, the level and quality of detail is impressive.

#### **Responses to *Dirty Politics***

26. Below are some of the important responses to *Dirty Politics*. It is not intended to be a comprehensive list. It is intended to test the book against the measures identified above.

#### ***Official response***

27. Some official inquiries were established as a result of *Dirty Politics*. The most important has been the inquiry by the Office of the Inspector-General of Intelligence and Security. This investigated whether the Security Intelligence Service ("NZSIS") had acted properly in the way that it disclosed information about a meeting between the Leader of the Opposition and the Director of the NZSIS.
28. A true copy of the final report of that inquiry is at **Exhibit 1/1**. The Inspector-General was highly critical of what had occurred in relation to the release of information. It found "significant failures by the SIS to meet its obligations". This investigation confirmed some of the revelations in *Dirty Politics*. It also vindicated the concerns Mr Hager expressed in *Dirty Politics* in relation to those revelations.
29. In an interview with John Campbell on 25 November 2014, Rebecca Kitteridge, the Director of the New Zealand Security Intelligence Service, acknowledged that the significant failures identified by that inquiry "came to light through [*Dirty Politics*]".



30. An investigation was also carried out by Justice Chisholm into allegations that Judith Collins had acted improperly in relation to the Head of the Serious Fraud Office. This did not relate to a revelation contained in *Dirty Politics*. Rather, it was a related matter that came about as a consequence of the media scrutiny into the matters set out in *Dirty Politics*, and also based on a piece of Mr Slater's correspondence.
31. A true copy of the final report of that investigation is at **Exhibit 1/81**. The report found that there was no evidence to support the allegations. The investigation did not encompass the allegations against Judith Collins that were set out in *Dirty Politics*.
32. The Privacy Commissioner is investigating alleged breaches of privacy by Judith Collins in relation to information she is said, in *Dirty Politics*, to have given to Mr Slater. I have also been provided with the Privacy Commissioner's determination in relation to a complaint made against Mr Hager for publishing *Dirty Politics*. The determination is significant in that it revisits the issue of whether a non-fiction book can fall within the news medium exception under the Privacy Act. A true copy of that determination is at **Exhibit 1/180**.
33. Other investigations have also been launched but have not yet been completed. The Police are looking into complaints from the Labour Party based on the revelation in *Dirty Politics* about the hacking of the Labour Party's computer system in 2011. The Chief Ombudsman has launched a wide-ranging investigation into the operation of the Official Information Act, which includes an investigation of criticisms contained in *Dirty Politics*.
34. This high number of official inquiries relating to one particular published book is quite extraordinary, and shows just how important the book has been. In addition it is worth noting that after the publication of *Dirty Politics*, three opposition parliamentary parties – Labour, the Greens, and New Zealand First – all called for a royal commission of inquiry into

issues arising out of the book. Such calls are not made carelessly. As stated below, this call for a royal commission has been supported by a leading academic.

*Media response*

35. *Dirty Politics* raised many questions about the role of the media in covering politics, and about the use by individual journalists of material from Cameron Slater. A significant debate has since occurred about this, with various journalists publishing their own accounts or explanations.
36. For example, New Zealand Herald investigative journalist David Fisher replied to the book with something of a mea culpa in the article, "My History with Cameron Slater". A true copy of that article is at **Exhibit 1/185**.
37. Elsewhere in the media there have been debates about the role of the media in the scandal. For example, TV3 News did a story entitled "Journos 'soul-searching' after latest Dirty Politics leaks". The video for that story is viewable at <http://www.3news.co.nz/politics/journos-soul-searching-after-latest-dirty-politics-leaks-2014090210>. A true copy of the text accompanying that video on TV3 News' website is at **Exhibit 1/189**.
38. A large part of my research involves following the coverage of New Zealand politics in the media. My strategy is to try to record and aggregate nearly everything that is produced on given topics. In the case of *Dirty Politics*, I have never witnessed such large amounts of media reportage and examination of one particular issue, let alone one particular book. Even measured against Mr Hager's previously controversial books, the media response was much more serious.
39. As a quick metric of media coverage, a search for the term "Dirty Politics" on the New Zealand Herald website, for 2014, brings up 532 stories. Similarly, a search on the Knowledge Basket database of media, brings up 27,887 documents for 2014.

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*Public response*

40. The incredible public response to *Dirty Politics* is seen most clearly in the huge sales of the book – more than 20,000 copies were sold in 2014. In the first week of its release, *Dirty Politics* was the number one bestselling book in New Zealand, and according to the Nielsen Bookscan company, *Dirty Politics* was the fifth biggest selling book in the “New Zealand Non-Fiction for Adults” category for the 2014 year.
41. In addition, in the week after publication, Google’s search engine rankings showed that *Dirty Politics* was New Zealand’s most searched item online, while searches for information about John Key also doubled.
42. The relationship between the media and bloggers that is dealt with in *Dirty Politics* is clearly of great interest to the public. After the book came out, Horizon Research polled on the issue, finding: “More than half of adult New Zealanders (53.1%) believe mainstream media (newspapers, radio and television) have failed to act impartially in relation to material provided to them by bloggers”. A true copy of the results of that poll is at **Exhibit 1/190**.
43. The same research found that “Large numbers of New Zealanders are aware of and talking about the issues raised as a result of the publication of Nicky Hager’s book, *Dirty Politics*”. It also suggested that there was significant public concern about the sorts of tactics outlined in *Dirty Politics*. Just over 80 per cent said they preferred it did not happen in New Zealand. The research report goes on to say that “The results indicate the Prime Minister, John Key, has made 135,700 people who voted National in 2011 feel angry, or disappointed or disgusted”.
44. The public opinion research firm of UMR carries out on-going research into what political stories in the media are of greatest interest to the public. UMR’s latest Mood of the Nation report, for 2015, shows that the controversies around the publication of the book, and then separately the

resignation of Judith Collins (as a consequence of that debate) were two of the biggest political stories of the year, with 43% and 45% of respondents saying they followed these stories closely. A true copy of that research report of that poll is at **Exhibit 2/218**.

45. Another very interesting survey response was in terms of corporate CEOs. Business journalist Fran O'Sullivan reported in November 2014 that "The Herald's Mood of the Boardroom Election survey of CEOs found that 62 per cent felt "Brand Key" had been damaged by the Nicky Hager revelations, 66 per cent believed it exposed an unhealthy relationship between politicians and bloggers and 76 per cent of those surveyed raised issues of political probity concerning Judith Collins". A true copy of the New Zealand Herald article recording those results is at **Exhibit 2/280**.
46. In a time when the public's participation in politics is continuing to decline, there were surprisingly large numbers of people who attended public meetings where Nicky Hager appeared. Mr Hager gave talks all around the country. His Auckland meeting was attended, according to a TVNZ report by "around 400". A true copy of that report at **Exhibit 2/283**. Similarly, in Dunedin, Hager spoke to a public meeting (which I chaired) organised by a bookshop, which involved about 200 people paying \$15 a ticket.
47. Much of the public also clearly felt, in 2014, that the revelations in *Dirty Politics* were such that they were taking them into account in terms of their voting decision for the general election. According to TVNZ, their in depth Vote Compass survey had 36% of respondents "saying the book has affected their voting decision". A true copy of that report is at **Exhibit 2/285**.

### *Academic response*

48. Nicky Hager's books are not produced in a university context, yet academics appear to use his various books widely. I myself make particularly frequent use of his *Hollow Men* book in a number of courses I teach. In fact, it is worth noting that the foreword of that book is by academic Marilyn Waring, who makes this important comment about Mr Hager's methodology: "Nicky's approach is thorough. He generally assembles the subject matter in each 'case study' chronologically, so we can trace the emails, any other correspondence, the diary entries, and the newspaper coverage, point by point. In the social sciences we call this 'sophisticated rigour' and Nicky would mark very highly in this respect".
49. There will continue to be significant academic responses to the publication of *Dirty Politics*. I participated in a three-hour academic symposium entitled "Debating 'Dirty Politics': Media, Politics and Law", which has since been watched online about 4,500 times. A video of it can be viewed at <https://www.youtube.com/watch?v=ZdgPh0Wh3g0>.
50. Distinguished academic Dame Anne Salmond, the University of Auckland's Distinguished Professor of Māori Studies and Anthropology, has joined political calls for a royal commission. That view was accorded in a newspaper opinion piece entitled "Royal commission needed to clean up dirty politics", a true copy of which is at **Exhibit 2/287**.

### **High-profile people saying these revelations were important**

51. A number of high-profile and important public figures commented upon the public importance of *Dirty Politics* in the weeks after it was released.
52. Leading political journalist John Armstrong (of the New Zealand Herald) compared the revelations to the most famous political scandal of American politics, pronouncing *Dirty Politics* as "The closest we've had to a NZ Watergate". A true copy of the New Zealand Herald article containing that comment is at **Exhibit 2/289**.

53. In another article, Mr Armstrong also explained that ““Hager's book goes to the heart of the Government”. He commented on the reliability of the author saying, “no one has ever produced the evidence to question the veracity of the content of Hager's books. In short, Hager is credible”. A true copy of the New Zealand Herald article containing those comments is at **Exhibit 2/296**.
54. The book's publication was also covered by the international media. For example, the *Guardian* newspaper ran numerous stories about it, including one feature by an Australian writer, Antony Loewenstein, who explained its importance, saying “It's extremely rare to have the genesis of a political smear campaign uncovered for all to see, just like it is uncommon to read the correspondence between senior government officials and media backers to attack opponents and critics. And yet, that is exactly what is unfolding in New Zealand. New Zealanders are currently witnesses to an exposé of unprecedented proportions.” A true copy of the *Guardian* article containing that comment is at **Exhibit 2/299**.
55. Public interest in the book was asserted by many other high profile figures. For example, retired appellate judge Sir Ted Thomas spoke out about the book to one audience, as reported by David Fisher: “Sir Ted Thomas... told the crowd the author had an obligation as a journalist and citizen to make public information a hacker took from Slater's computer. He said the use of the information was outweighed by the public interest in having it revealed. He said it was "vital in a democracy deviant political practices are exposed". A true copy of the New Zealand Herald article containing the report of those comments is at **Exhibit 2/302**.
56. The “public interest” factor was also discussed in a newspaper opinion piece by Professor Simon Keller of the Philosophy school at Victoria University. He said “The role of political bloggers, as revealed in the book, is symptomatic of a larger trend toward the control and manipulation of information, not just by governments but by many

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organisations that use public relations and communications consultants". He also noted that "a society in which such figures wield so much power is not a healthy democracy". His conclusion was that "Democracy, sadly, may depend on books like this one". A true copy of the Dominion Post article containing those comments is at **Exhibit 2/303**.

57. Probably the most surprising high profile public voice to give endorsement to *Dirty Politics*, was National Party member, lobbyist, and political commentator, Matthew Hooton. Despite being implicated in the book himself, Hooton wrote widely about the importance of the book and the issues it raised. For example in a political column in *Metro* magazine, Hooton discussed Mr Hager's credibility and declared that "nobody has ever shown his documentary evidence to be false". He argued that the operations revealed by Mr Hager amounted to "an appalling abuse of power", and that "After what has been revealed, the government deserves to lose on September 20 [the date of the general election]". In terms of some of those government operations, Hooton explained that "Parliament provides the Prime Minister with extraordinary powers" and that Hager's evidence showed they had been misused. In particular, he said that "the documentary evidence in *Dirty Politics* shows that Judith Collins, whom Key has entrusted with running the nation's police force, prison system, justice ministry, and accident insurance scheme, is not fit for senior office". A true copy of that *Metro* magazine article is at **Exhibit 2/305**.

58. Another senior conservative commentator, Karl du Fresne, also credited Mr Hager's investigation with great importance: "As irritating as Hager's sanctimony is, we are left with the disgusting reality that he has exposed government involvement in sleazy smear campaigns and machinations of a type that Richard Nixon would have approved. The political process, which has traditionally been remarkably clean in New Zealand, has been

tainted". A true copy of the *Nelson Mail* article containing those comments is at **Exhibit 2/309**.

### **Other consequences**

59. At the centre of *Dirty Politics* are bloggers, disseminating political information and analysis online in the "new media". This area is one of great importance for electoral politics and public debate. The blogosphere has become a vital part of modern democracy and communication. But there are many problematic elements to it, which is why in recent years the Law Commission has been carrying out in depth research into issues relating to regulation and law of online activity. There has been much concern about "cleaning up" the blogosphere.
60. As a result of the publication of *Dirty Politics* there is now a definite move in the blogosphere towards greater transparency. Disclosure statements are more frequent. A number of bloggers have issued statements about their blogging policies. There is now greater clarity about the ethics of many bloggers. Some blogs have also now joined the Online Media Standards Authority, making them accountable to that body's code of ethics and a complaint procedure. For instance, leading blogger David Farrar has done so. He indicated that this decision was as a direct consequence of the *Dirty Politics* scandal.
61. As stated above, as well as affecting new media, *Dirty Politics* has had an impact on the interoperation of the traditional media with new media, especially in regard to how political party spin-doctors and bloggers are dealt with. This is an area in which *Dirty Politics* is likely to have its most enduring effects. For example, according to the news chief of TV3, Mark Jennings – the longest-running head of broadcast news in New Zealand – the impact has been considerable. He was reported as saying: "senior politicians have abused their power over information for political impact - and journalists have been caught up in politically-inspired 'black ops'."



62. Jennings is quite candid about what has happened: "Spin merchants are in all parts of society - politics, sports, fashion, you name it. We are never going to break the spin machine. But a powerful light has been shone on this and there will be some real introspection in the media".
63. Duncan Garner, who was previously the political editor for TV3, and continues to be a leading voice in political commentary, said: "From now journalists will be more aware of who they're dealing with". Clearly journalistic practices are changing as a result of *Dirty Politics*.
64. A true copy of the Radio New Zealand news report including these comments is at **Exhibit 2/311**.
65. As stated above, the political use of new media is a recent area of particular interest to me academically. In my opinion, *Dirty Politics* has had, and will continue to have, a significant positive effect in this area. Specifically, I believe that society will now be better able to read blogs and online social media. An enhanced scepticism towards claims made online is a very healthy outcome.

#### **The important way that the *Dirty Politics* book was published**

66. *Dirty Politics* has provided New Zealand society with a unique source of information about how politics works. The provision of that confidential information has been crucial for this, and there really is no other way that such information could have come out otherwise, and be properly understood.
67. Mr Hager has very usefully played an expert role as an intermediary with this information. I have no doubt that in checking, providing context, weeding out material that is not in the public interest or unreliable, and making the information accessible, Mr Hager has acted for the public good. He has carried out those functions extremely well. If the confidential information in *Dirty Politics* had simply leaked out – as some of it eventually did – the revelations would never have been properly

analysed and contextualised. A simple dump or drip-feed would have been vastly inferior to having a journalist curate and analyse the material so that it could be properly comprehended.

68. Nicky Hager specialises in this methodology, and has come to receive an international reputation for the quality way in which he does this. Most of his media output is based on confidential sources, and provides a flow of important information to the public. He is to be commended for the public role that he plays.

### **Conclusion**

69. Set out above, I recorded official responses to *Dirty Politics*, as well as responses from the media, the public, and academics. I have also noted public expressions of the importance of this work from high-profile commentators. I have considered the significant public interest of the contents of *Dirty Politics*, the clarity of its presentation, its accuracy, and the obvious care and skill with which it was produced. I have noted significant changes in the field of new media that have already directly resulted from its publication. I have recorded both my view and the views of others that *Dirty Politics* is likely to have an enduring effect in that area.
70. In my view, the conclusion that *Dirty Politics* is a work of public interest is inescapable. It has had a major effect on New Zealand politics and can be expected to continue to do so for quite some time.
71. Change may directly result from reports yet to be completed by the Ombudsman and the Privacy Commissioner. There may yet be a commission of inquiry into all of the matters raised in *Dirty Politics*. But whether or not that occurs, *Dirty Politics* has changed the way New Zealanders think about the political information they are receiving through both new and traditional media.

72. This is why my conclusion is that *Dirty Politics* is not a just a work of public interest, it is a work of significant public importance.

Affirmed at Dunedin

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*Zoye Edwards*

on the 31<sup>st</sup> day of March 2015

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before me

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*L.E. Brown*

L.E. Brown, JP

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Justice of the Peace for New Zealand



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A solicitor of the High Court of New Zealand

*Justice of Peace L.E. Brown. Linda Ellen Brown*

