

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

Statement of issues

Dated: 10 July 2015

Next event: 13-15 July 2015 for hearing before Clifford J

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May it please the Court:

1. This memorandum sets out a statement of issues to assist the Court in relation to the substantive hearing of this matter on 13-15 July 2015.
2. His Honour Justice Brown requested a list of issues. His Honour said he did not want a detailed roadmap covering every issue that needed to be determined, but rather a page that set out the broad issues that were raised. His Honour asked the parties to attempt to agree such a list but said that if that were not possible it would be of assistance to receive a statement of issues about which the parties did not agree.
3. The parties agree that this matter raises the following issues:
 - 3.1. Is the Police decision to seek a warrant, or to apply for it in the manner that they did, justiciable?
 - 3.2. Is this an appropriate case for the Court to consider under judicial review?
 - 3.3. In respect of:
 - 3.3.1. the decision by Police to seek a warrant,
 - 3.3.2. the decision by Police to apply for a warrant in the manner that it was applied for,
 - 3.3.3. the decision by the Judge to issue the warrant, and
 - 3.3.4. the decision by the Police to execute the warrant in the manner that it was executed;to what extent, if at all, did the decision makers have to take account of:
 - a) the applicant's rights under s 14 and 21 of the New Zealand Bill of Rights Act 1990, including but not limited to issues relating to journalistic source protection under s 68 of the Evidence Act 2006; and/or

- b) the common law requirements in relation to searches of the media including the Court of Appeal's guidance in *TVNZ v Attorney-General* [1995] 2 NZLR 641?
- 3.4. Did the decision makers take sufficient account of these matters and, if not, were those decisions consequentially unlawful?
- 3.5. In respect of the same decisions, did the respondents act inconsistently with the applicant's rights under s 14 and 21 of the New Zealand Bill of Rights Act 1990, including but not limited to issues relating to journalistic source protection under s 68 of the Evidence Act 2006, to an extent that cannot be demonstrably justified in a free and democratic society?
- 3.6. In respect of the same decisions, were the decision makers bound to reach decisions consistent with the common law requirements in relation to searches of the media including the Court of Appeal's guidance in *TVNZ v Attorney-General* [1995] 2 NZLR 641?
- 3.7. If so, did they?
- 3.8. Did the application for a search warrant fail to disclose material information?
- 3.9. When applying for the warrant, did the Police have reasonable grounds to believe that the search would find evidential material?
- 3.10. Were those reasonable grounds to believe set out in the application?
- 3.11. Was the warrant unduly wide?
- 3.12. Was the application for and/or the issuing of the warrant unlawful due to the absence of any express conditions aimed at protecting the applicant's interests?
- 3.13. Have the Police breached the applicant's privilege, their policy, their undertakings to him, and the statutory requirements for a search of this kind, once or more than once?

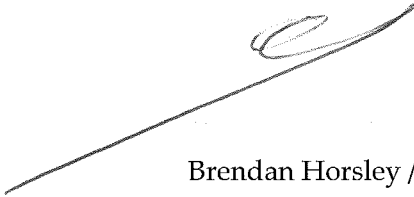
3.14. Did such breaches of privilege separately or together amount to a breach of the applicant's rights under ss 14 and 21 of the New Zealand Bill of Rights Act 1990?

3.15. Did any or all of the Police requests for the applicant's information from third parties amount to a breach of the applicant's rights under ss 14 and 21 of the New Zealand Bill of Rights Act 1990?

10 July 2015

A handwritten signature in black ink, appearing to read 'Felix Geiringer', written in a cursive style.

Julian Miles QC / Felix Geiringer / Steven Price

A handwritten signature in black ink, appearing to read 'Kim Laurenson', written in a cursive style.

Brendan Horsley / Kim Laurenson