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High Court At Wellington
Justice Clifford
C/- High Court Registra

Response to court minute of 17th September from Clifford J concerning granting Scoop.co.nz access to the High Court file in the Hager judicial review proceedings CIV-2014-485-11344.

Dear Sir,

Thankyou for your consideration of my application to the Court seeking access to the court file for the Hager Case which was heard in July before you, and which I submitted to you on July 13th.

I have received your minute dated 17th September. And in relation to the question posed in paragraph [4] confirm that Scoop Independent News continues to seek access to the contents of the court file.

In paragraph [3] you set out the views of the parties in relation to my application. You note that Mr Hager wishes to protect some private information - and this is something we are happy to agree with.

You go on to note that:

"The respondents seek the withholding of all of the affidavit evidence, save for the affidavits of Messrs Ellis, Fisher, Edwards and Hersh (who filed affidavits in support of Mr Hager), and a considerable amount of other material."

My initial response to this is to ask what is included in the "considerable amount of material" that the respondents are apparently willing to release? I do not see how it is possible for Scoop to answer whether this is sufficient disclosure without a specific list of what the respondents are willing to disclose.

Paragraph [3] continues:

"The respondents' basic submission is that Scoop should be able to understand the basis of the claim and the arguments on both sides by considering the statements of claim and statements of defence and the submissions made."



I note firstly that Scoop did not have access to the statements of claim and statements of defence. Neither were read out in court and Scoop has not been provided with any written material about the case from either side.

With the benefit of hindsight perhaps I should have requested a copy of the opening and closing submissions of the two parties from the parties directly. These documents are routinely provided to media in complex cases such as this - but in this case were not, as far as I am aware.

Similarly perhaps I should have applied specifically to the court for access to the statements of claim and defence - however I assumed that asking for access to those documents was part of my request on 13th Jul. I was aware that deliberation of this request was continuing and have therefore been awaiting the outcome of that deliberation.

Therefore I suggest the following.

Given that there is consent on both sides to their release perhaps in the in the first instance it would be helpful to make these documents - i.e. the written opening and closing statements (or transcripts thereof) plus the Statements of Claim and Defence available to Scoop as a first step while you consider the issues and my request which continues below.

Secondly, in relation to the respondents observations about what Scoop should have been able to understand as a result of being present during proceedings.

The reason that I made this request in the first place was that as a result of the brevity of the proceedings in it was not simply not possible to understand the case in from the submissions of counsel and statements in open court.

I attended much of the first day of proceedings personally and returned for the closing submissions. From what I observed counsel were jumping through the written submissions highlighting issues of particular significance to bring to your attention. Nearly all evidence from witnesses was in affidavit form only. Most of this evidence was accepted by the parties and therefore not presented in submissions. And as the applicant elected not to pursue any allegation of bad faith (in order as far as I understood it to enable the expeditious hearing of the case) many avenues of questioning which might have been ordinarily proceeded in a case such as this were closed.

For these reasons in this case the court proceedings disclosed a tiny fraction of the case.

In conclusion I would observe that there are aspects of this case which I think merit the court imposing a particularly high standard of disclosure and transparency.

Namely this is a case which:

1. concerned the police response to a piece of very significant journalism which was published in the lead up to a General Election which appeared to disclose abuses of great power;

2. concerned a police raid on the house of a renowned journalist, the warrant for which was issued just 10 days after this General Election and a raid which took place just two weeks after this General Election;
(note: these two considerations make the actions of police particularly important from a public interest case. This is not any old search case - it is a search case of constitutional significance relating to protection of BORA rights to freedom of expression and the ability of media to inform electors so they are able to exercise their responsibilities to vote as an informed citizenry.)
3. is likely to result in a lasting judicial precedent around the issue of journalist source protection and whistleblowing which will guide the policy of Police in relation to their responsibility to protect journalistic privilege;
4. involved the parties to the proceedings agreeing to a truncated court procedure which meant that in large part the evidence was not disclosed in open court and exists almost in its entirety only in the written affidavits;

It is my submission to the court then that in this case it is even more important than usual for "justice to be seen to be done". For that to happen the actual events leading up to and which took place in the raid ought to be opened to the full sunshine of public transparency within whatever limits are necessary to maintain public order and confidence in the justice system.

It is important in Scoop's submission that the police, the public and the media all understand what happened in this case so that we can all well understand what the law around protection of journalistic privilege is. This will enable us all to understand the full importance of a case which will likely become the leading authority in this very important and seldom litigated area of public law.

I would therefore request that the Scoop be provided with:

- Access to the full affidavits of the principle applicant and respondent witnesses whose testimony is mentioned in the opening and closing submissions and which plays a significant part in the Statement of Claim or Statement of Defence;
- Access to the transcripts, emails and timelines produced to the court and mentioned in the opening and closing statements which assisted the Court to understand the context of what occurred in this case in a narrative sense;
- Access to a list of all the affidavits which are contained in the court file so that specific application can be made to portions of the file which are withheld if they are considered important and are referenced in parts of the evidence which is released.

Yours Sincerely



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