

Police apologise to Nicky Hager

In a settlement with far-reaching implications, the New Zealand Police have apologised to Nicky Hager for multiple breaches of his rights arising from their 2014 investigation into *Dirty Politics*.

Nicky Hager's home was raided by Police in October 2014. The raid was part of an investigation into the source of Nicky Hager's book, *Dirty Politics*. In 2015, the High Court ruled that the warrant that was used for the raid was "fundamentally unlawful". However, many more alleged breaches of Mr Hager's rights were left to be resolved at a later hearing.

In today's settlement, Police have accepted that they did not have reasonable grounds for the search, that they attempted to breach Mr Hager's journalistic privilege in multiple ways, and that they unlawfully obtained his private information from third parties including his bank. **[The full Police statement is included below.]**

"This is a very important agreement," said Mr Hager. "The Police have admitted that many things they did in their investigation and search were unlawful. This sends a vital message that people can share important information with journalists with confidence that their identities will be protected. The Police have apologised for threatening that confidentiality and trust."

As part of the settlement Mr Hager is to receive substantial damages and a substantial contribution to his legal costs. Mr Hager said "Under the agreement, I am not allowed to name the figure. However, it gives the strongest possible indication that Police accept the harm they caused and are much less likely to treat a journalist this way again. The money will help support important work in years to coming."

During a 10-hour search of his home in 2014, Mr Hager claimed journalistic source protection privilege. He later learned that Police officers breached express promises made during the search and photographed privileged documents to use in their investigation. Police also sought to circumvent Mr Hager's rights to source protection by obtaining his private information from third parties such as Air New Zealand, Qantas, PayPal, Customs, WestPac, Vodafone, and Two Degrees. Luckily, none of this succeeded in exposing any sources.

"This has been a long fight, but we stuck at it because we believe what we were fighting for was important," Mr Hager said. "I want to thank my legal team and all of the people around New Zealand who have cared about the case and supported it over the last three and a half years".

Media enquiries to Felix Geiringer (barrister) on 022 0243402, Steven Price (barrister) on 022 0262997, or Nicky Hager on 04 384 5074.

Mr Hager's legal team asked independent experts in media law, privacy and human rights for their comments on the significance of the Police apology.

Professor Ursula Cheer, Dean of the University of Canterbury law school, on the significance of the apology for journalists and their sources: "Congratulations to Nicky Hager and his legal team. The police acknowledgment that they can't ignore fundamental reporter/source protections in the New Zealand Bill of Rights Act, the Evidence Act, the Search and Surveillance Act and our privacy law has been a long time coming. Crucially, this acknowledgment should correct and reduce any chilling effect on journalist's sources created by the wrongful police search and seizure of information held by Mr Hager in 2014. The police cannot ignore they have a duty of candour when seeking and executing warrants against journalists. Police have to ID journalists when seeking a warrant. They have to ensure journalists have an opportunity to claim source confidentiality before any search is carried out. In short, they have to do it right. This is a vital win for journalists, their sources and freedom of expression, both nationally and internationally."

Professor Paul Roth, Otago University, on the significance of the apology for the privacy of our banking and other records: "It is reassuring to have fundamental legal principles upheld in an age of diminishing privacy, when entities such as banks have been happy to turn out our pockets for Police investigations even where the underlying legal authority is flawed or non-existent. The Police's acknowledgment and apology to Nicky Hager recognises that the Police, and their sources of information, are subject to the law of the land like everyone else, and that New Zealand is not a police state."

Professor Andrew Geddis, Otago University, on the significance of the apology for human rights: "The series of failures admitted by the Police indicates a deeply concerning failure to both understand the legal constraints on their powers and the fundamental importance of individual rights. This comprehensive apology hopefully indicates that the message has been driven home and such behaviour will not happen in the future."

Full text of Police acknowledgement and apology

1. Mr Nicky Hager has instituted High Court claims against the Crown resulting from:
 - 1.1 the search of his property at Wellington on 2 October 2014 after publication of his book, *Dirty Politics*, and;
 - 1.2 information requests and production orders obtained in respect of Mr Hager's information held by various agencies.
2. As part of the settlement of Mr Hager's claims, the New Zealand Police wish to acknowledge the following breaches of Mr Hager's rights and to apologise for them.
3. In September 2014, Police sought and obtained 10 months of Mr Hager's banking transactions. This was done with an informal information request and without a production order. Police acknowledge that Mr Hager had a reasonable expectation of privacy in relation to that information. The Supreme Court have recently provided clarification on when a production order needs to be applied for. In light of that judgment, Police accept that they needed to obtain a production order in order to obtain Mr Hager's banking information.
4. At the end of September 2014, Police applied for and obtained a search warrant to search Mr Hager's home. Mr Hager was not a suspect of any offending.
5. Police failed to mention in their application for the search warrant that they sought information to identify one of Mr Hager's confidential sources and failed to mention that Mr Hager was a journalist who could claim journalistic privilege. The High Court has found that in this regard Police failed to discharge their duty of candour and the warrant was unlawful. The High Court also expressed concern that Police lacked reasonable grounds to obtain a warrant. Police accept the High Court's preliminary assessment.
6. Police also now accept and acknowledge that in certain respects the search warrant was overly broad and should have contained conditions to address concerns raised to protect journalistic privilege.
7. Police searched Mr Hager's home for almost an hour before Mr Hager claimed journalistic privilege over his material at the time of the search of his home. Police accept the High Court's position that they needed to give Mr Hager a positive chance to claim that privilege before commencing the search.
8. During the search, Police took a photograph of a printed copy of an email exchange between Mr Hager and another person and used it to conduct enquiries. Police

also photographed documents containing login information for web accounts and a cloud storage facility and tried to use that information to access those websites. Police also took copies of information relating to a cell phone and used that information to obtain production orders from phone companies. Police acknowledge that these were breaches of Mr Hager's legal right to protect his sources and should not have occurred.

9. Police acknowledge that lawyers for Mr Hager wrote to their lawyers on 7 October 2014 and told Police that Mr Hager also had claims of privilege over information relating to his private communications, or his other private documents, held by third parties.
10. After the search, Police continued the investigation by seeking and obtaining Mr Hager's private information from various third parties including Air New Zealand, Paypal, NZ Customs, and Jetstar. When Police used production orders, they should have and failed to disclose Mr Hager is a journalist who is entitled to claim privilege. They also failed to mention that Mr Hager had claimed privilege during the search on 2 October, or what his lawyers had said in their 7 October letter. These were breaches of their duty of candour in each instance.
11. Police acknowledge that Mr Hager had a reasonable expectation of privacy in relation to information that could be used to identify his confidential sources. Police also acknowledge that there are legal protections in relation to such information that can only be waived by a High Court Judge. As such, it was not appropriate for the Police to seek such information from third parties without a suitable court order.
12. In making some information requests, Police said that they suspected Mr Hager of criminal behaviour including fraud. Police accept that they had no basis for such allegations.
13. Police acknowledge that in the respects outlined above they breached Mr Hager's right under ss 14 and 21 of the New Zealand Bill of Rights Act.
14. Police acknowledge that the search of Mr Hager's property caused distress to him and his family and threatened his ability (and that of the wider media) to access information from confidential informants.
15. Police apologise unreservedly for these breaches of his rights and have agreed to pay Mr Hager damages and his legal costs.