

No Small Victory: Kim Dotcom and New Zealand's Human Rights Review Tribunal

By [Dr. Binoy Kampmark](#)

Theme: [Justice](#)

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*"It's really quite incredible how, at nearly every turn the New Zealand government has managed to mess up the legal case against Kim Dotcom." - **Mike Masnick**, Techdirt, Mar 26, 2018*

Put it down to his tigerish perseverance, or sheer faith in those powers of endurance, but **Kim Dotcom's** victory before New Zealand's Human Rights Tribunal had a stirring ring to it. The Tribunal found for Dotcom, awarding him NZ\$30,000 for "loss of a benefit" and NZ\$60,000 for "loss of dignity and injury to feelings" incurred by breaches of the Privacy Act by the previous NZ Attorney-General.

In July 2015, Dotcom made various information privacy requests on his case made notorious by the FBI's pursuit of him as a notable founder of Megaupload, a data sharing and storage enterprise that rankled with the copyright fanatics on the other side of the pond. The information requests were directed at what specific material various officials in the New Zealand government held on him. These requests, instead of being dealt with in immediate fashion, were conveyed to a less than sympathetic Attorney-General, **Chris Finlaysen**.

The position of the authorities proved bleak, unsympathetic and dismissive to Dotcom. In the [words](#) of the Solicitor-General to the Privacy Commissioner,

these "were not genuine Privacy Act requests but rather a litigation tactic and a fishing expedition" with "an ulterior motive".

That motive was to frustrate his ongoing extradition hearing which is being cheered on by US law enforcement authorities.

What unfolded was a procedural bungle of momentous proportion. All in all, the recipients of Dotcom's requests were not meant to convey this to the Attorney-General. Like the Solicitor General, each should have considered the issue [instead of claiming](#) that "the information sought, to the extent it is held by other agencies, is more closely connected with [the] functions as Attorney-General." The Solicitor General further compounded the issue by deeming Dotcom's grounds "vexatious" and "trivial" in the nature of information being sought. Woe to privacy, indeed.

One line from the Tribunal is needlessly torturous but bears reiterating:

“In these circumstances it was artificial for the Crown to argue that simply because the Attorney-General, Solicitor-General and Crown Law were the Crown’s legal advisers and conducting litigation against Mr. Dotcom the transferring agencies would properly believe the information to which the requests related were more closely connected to the functions or activities of the Attorney-General, Solicitor-General or Crown Law as the providers of legal advice and representation to the Crown.”

No transfer, given the circumstances, was permitted.

In rather damnable fashion, then, the Attorney-General “had no authority, as transferee, to refuse to disclose the requested information.” Dotcom had effectively shown that “there was no proper basis for the refusal” under the Privacy Act.

The Tribunal was similarly unimpressed by the arguments advanced by the Attorney-General that an “ulterior motive” clouded Dotcom’s requests, marring them as vexatious for having an improper purpose. They duly found “that Mr Dotcom has amply satisfied us, to the civil standard, that contrary to the assertion by the Crown, he had no ulterior motive in making the information privacy requests.” These were genuine, having revealed no intention “to disrupt the extradition hearing.”

For those willing to read the judgment in full, a pile of mockery is heaped upon New Zealand’s error prone agencies. How, for instance, could a claim of irrelevance be made without Dotcom knowing what information on him was relevant to begin with?

A series of other failed efforts on the part of the government are also documented, including a good degree of errand boy behaviour before US masters. The failure to register, and to authorise a US forfeiture order that would have rendered Dotcom impecunious and incapable of mounting a defence against extradition, is highlighted with some disdain.

These chronicles on fumbling and bumbling have become thick folios of malice and incompetence. The spectacular dawn raid on Dotcom’s house in January 2012 was initially [declared invalid](#) by High Court justice **Helen Winkelmann**, having failed to specify what offence justified the raid and under what terms the warrant was being executed over.

Justice Winkelmann also ruled that the all-committed FBI had broken the law in removing digital material from Dotcom’s computers and taking it out of New Zealand.

“They could not authorise the shipping offshore of those hard drives with no check to see if they contained relevant material.”

Rather oddly, the New Zealand appeals court overruled Justice Winkelmann’s findings despite admitting to defections in the warrants.

“This really was a case of error of expression. The defects were defects in form not in substance.”

Even a casual reading of the case would suggest their Honours to have gone into hibernation on this one.

Dotcom has also been the subject of keen interest from New Zealand's Government Communications Security Bureau (GCSB), the miniature, though not negligible counterpart of the US National Security Agency. When found that he had been the subject of illegal surveillance (NZ residents are supposedly exempt), [police claimed](#) that such breaches on the part of GCSB showed no "criminal intent" and declined to mount prosecutions.

For its non-criminal part, the GCSB proceeded to behave with suitably guilty minds in attempting to cover up evidence of such surveillance, only to then claim that an automatic "delete" function had removed aged material. **Prime Minister John Key** [would claim](#) with Alice in Wonderland absurdity that there were no missing files.

"This is a spy agency," he told Parliament. "We don't delete things. We archive them."

Except, he conceded, when "raw material... ages off the system". With delicious perversion, such data would have to be deleted by law as it was "no longer relevant".

Little wonder, then, that Dotcom is overjoyed. Another legal canard biting the dust; another triumph to add to a bulging file.

"After years of perseverance the time is here, we won, we're getting to the truth," [he chortled](#) in a joyful tweet. "I'm no longer the defendant."

Not quite - but on this occasion, his victory refocused attention on the subject of Dotcom as a person of legal worth, one singled out by the absurdist, malevolent tendencies of arbitrary state power.

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