



**Supreme Court of New Zealand
Te Kōti Mana Nui**

23 December 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**KIM DOTCOM & ORS v HER MAJESTY'S ATTORNEY-GENERAL
(SC 25/2014) [2014] NZSC 199**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsfnz.govt.nz

The United States of America seeks to extradite Mr Dotcom and the other appellants to face trial on counts relating to racketeering, copyright infringement and money laundering arising out of their involvement in the Megaupload website. The United States requested New Zealand's assistance under the Mutual Assistance in Criminal Matters Act 1992. New Zealand police obtained search warrants in respect of three addresses occupied by or associated with Mr Dotcom and another appellant. On 20 January 2012, police searched those addresses and seized items belonging to the appellants, including computers and other electronic equipment. Immediately before executing the search warrants, the police arrested the appellants pursuant to provisional arrest warrants issued by a District Court Judge on the application of the United States.

The appellants brought judicial review proceedings challenging the validity of the search warrants. They were successful before the High Court. The Court of Appeal allowed the Attorney-General's appeal. The appellants appealed to the Supreme Court.

The appellants submitted that the search warrants were not valid because they were not issued in the form prescribed by the Mutual Assistance Act and regulations. The appellants said the search warrants inadequately described

the offences, under United States law, to which they related. As well, the search warrants were overbroad in their description of the material to be seized, a defect that was exacerbated by the absence of any conditions as to the sorting of the seized material. The warrants purported to authorise the seizure of computers and other electronic equipment but made no provision for dealing with irrelevant material stored in them.

The Supreme Court, by majority comprising McGrath, William Young, Glazebrook and Arnold JJ, has dismissed the appeal. The Chief Justice has dissented.

The majority of the Court has decided that, although the search warrants were deficient in their description of the offences to which they related, these defects did not result in any miscarriage of justice to the appellants. While the search warrants did not specify that the offences were against United States law, or that the offences were punishable by two or more years' imprisonment, this did not cause any significant prejudice to the appellants. Taking the surrounding circumstances into account, particularly the explanations given to the appellants by the officers before beginning the searches and the contents of the arrest warrants that were executed immediately before the searches began, it was clear that Mr Dotcom and the other appellants were given the relevant detail about the offences to which the search warrants related. Accordingly, the search warrants were valid by virtue of s 204 of the Summary Proceedings Act 1957, which provides that no warrant shall be held invalid by reason only of a defect or irregularity in form unless the Court is satisfied that there has been a miscarriage of justice.

The majority of the Court has found that there was no error in relation to the breadth of the search warrants or the absence of conditions. Although special privacy concerns are engaged where a computer is searched, the material before the Judge who issued the search warrants set out the basis for the police's belief that the computers and other electronic items would contain material relevant to the alleged offending. The warrants made specific reference to computers and other electronic devices and it was implicit that search would follow seizure of these. Despite the need to take the computers offsite to search their contents, it was not necessary for the issuing Judge to include conditions in the warrants. If police acted unlawfully in searching the computers' contents for relevant material, that would be addressed in the normal way.

Looking at the matter overall, the majority has concluded that, although the warrants could have been drafted more precisely, the appellants were reasonably able to understand what the search warrants related to. Any issues relating to the way the search of the computers was conducted or the handling of irrelevant material should be addressed through other processes.

In accordance with the views of the majority, the appeal has been dismissed.

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