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Waihopai Ploughshares: Crown drops damages claim

5 February 2014

The Crown has unexpectedly dropped its court action against Waihopai Ploughshares and is no longer suing them for \$1.2 million damages, the alleged cost of their disarmament action at the Waihopai spy base. This development comes in response to Waihopai Ploughshares' application for leave to appeal against the October 2013 Court of Appeal decision. It means that the Crown will no longer be able to pursue Waihopai Ploughshares for any of the \$1.2 million sought, but also that Waihopai Ploughshares' arguments against the decision will not be heard by the Supreme Court.

In April 2008, Waihopai Ploughshares - Adrian Leason, Fr Peter Murnane and Sam Land - entered the grounds of the Government Communications Security Bureau (GCSB) spy base at Waihopai, prayed and deflated the dome covering one of the two antenna to highlight the role of the base in the 'war on terror'. The spy base is part of the United States National Security Agency (NSA) network and, among other things, uses the ECHELON global communications interception system to intercept private and commercial communications.

After Waihopai Ploughshares were found 'not guilty' of all charges in a jury trial in March 2010, the Attorney-General responded by lodging a civil claim on behalf of the GCSB for \$1.2 million - the alleged cost of replacing the dome, as well as the cost of beer, juice and savouries for the workers who repaired it. An overview of the events since April 2008 is included below, with links to more information.

The motives for the Crown finally dropping the damages claim are unclear - perhaps because it is an election year, the government is particularly keen to avoid any further revelations about the GCSB?

Or perhaps it is linked to one of the Waihopai Ploughshares' legal arguments - that the civil claim for damages is not justified on public policy grounds due to the *ex turpi causa* defence, which means that a court may deny relief to a plaintiff (here the GCSB) whose cause of action is founded upon illegal activity. And as events over the past two years have shown, the GCSB clearly has been acting illegally.

In September 2012, it was revealed that the GCSB - acting on behalf of United States' authorities - had illegally intercepted communications of permanent resident Mr Kim Dotcom. The outcome of a police investigation, released in August 2013, confirmed that the GCSB had acted in breach of Section 14 of the GCSB Act 2003, which (at that time) prohibited the agency from intercepting communications of any New Zealand citizen or permanent resident.

Also last year, the Report of the Secretary of the Cabinet's investigation into the GCSB's activities and its compliance framework was released. It identified a very disturbing range of compliance, oversight and organisational issues in the GCSB, and revealed that the GCSB may have illegally spied on 88 New Zealanders between April 2003 and September 2012.

Rather than holding the GCSB accountable for illegal activity, the government instead enacted amendments to the GCSB Act in August 2013 to extend the agency's surveillance and interception powers to include the communications of New Zealand citizens and permanent residents.

With the court action over, it is time to again fully focus on closing the Waihopai spy base - that is, after all, where this started, with an act of citizen's disarmament to highlight the spy base's role in the 'war on terror' and to shut it down.

Waihopai Ploughshares appeal to all people of faith and courage to pray, advocate and take action for an end to New Zealand's involvement in global surveillance and support for war.

"They will beat their swords into ploughshares and their spears into pruning hooks. Nation will not take up sword against nation, nor will they train for war anymore." Isaiah 2:4

• **Background information**

On 30 April 2008, the Waihopai Ploughshares - Adrian Leason, Fr Peter Murnane and Sam Land - entered the grounds of the NZ Government Communications Security Bureau (GCSB) / US National Security Agency spy base at Waihopai and punctured the dome covering one of the two antenna in protest of the role of the base - part of the US government's global spy network - in the 'war on terror'. Their statement is available at <http://www.converge.org.nz/pma/plshares.htm>

The Waihopai Ploughshares were charged with burglary and intentional damage, and their trial started on 8 March 2010. Their defence was based on 'claim of right' (widely misreported as a necessity defence). On 17 March 2010, the jury acquitted the three defendants. An overview of the trial with links to more information is available at <http://www.converge.org.nz/pma/plupdate.htm>

On 7 April 2010, the Attorney-General announced that the government would not appeal the verdict, but was considering suing Waihopai Ploughshares for (at that time) \$1.1 million.

In October 2010, the Attorney-General lodged a civil claim, on behalf of the GCSB, for \$1.2 million - see for example, '\$1.2m Crown seeking includes beer, pies' at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10679078

On 3 November 2010, the government announced that it would be limiting the 'claim of right' defence so that it could not be used in similar circumstances in future.

On 8 August 2011, there was a one-day hearing in the High Court as to whether the government would be awarded summary judgement of \$1.2 million damages for the costs of repair of the spy base dome (and food and drink for the workers who repaired it) or whether the matter would proceed to trial. The decision hinged around whether or not the judge considered the three defendants had a chance of successfully arguing a case that they were not liable for the damage caused, either because their actions were reasonable (in self-defence or out of necessity) or because, even if not reasonable, the government's illegal conduct at the Waihopai spy base meant judgment should be denied on the basis of *ex turpi causa*. A brief overview of the defence case is available at http://www.facebook.com/note.php?note_id=217666044947439

The High Court's decision was released on 31 August 2011. The judgement said that the defence did not have a case, and that summary judgement in relation to the \$1.2 million damages claim was therefore awarded in the government's favour, as well as court costs. All that remained was for the court to determine the amount of damages to be paid. The media release from Adrian Leason in response to the High Court decision is available at http://www.facebook.com/note.php?note_id=228892570491453

Waihopai Ploughshares appealed the decision to award summary judgement; and the Court of Appeal hearing on the High Court decision was held on 8 and 9 May 2013 - information about the hearing is available on the Waihopai Ploughshares page at <http://www.converge.org.nz/pma/plshares.htm>

On 25 October 2013, the Court of Appeal released its judgement and upheld the High Court decision - information about the judgement is available at <https://www.facebook.com/photo.php?fbid=585478738166166&l=8afc5e1c12>

A month later, on 25 November 2013, Waihopai Ploughshares appealed the judgment to the Supreme Court.

In response, in February 2014, the Attorney-General dropped the damages claim.