

8 September 2010

Kent Parker
Email: kent@counterspin.co.nz

Dear Sir

**The Bain trial and *David and Goliath*: Official Information request
Our Ref: OIA353/1**


I write in response to your request to this office for "an informed response" regarding the Solicitor-General's media statement warning against illegitimate public discussion about the *Bain* case in the period leading up to David Bain's re-trial. You specifically ask how the re-issue of *David and Goliath: the Bain family murders* (in July 2007) stands in relation to the Solicitor-General's warning that those who try to usurp or influence the *Bain* trial process risk facing a charge of contempt of court.

Your request does not strictly fall to be considered under the Official Information Act 1982, as it is not a request for pre-existing information, but rather appears to seek the expression of an opinion. In light of that what I can advise is that the Solicitor-General was aware of the book and very concerned at the timing of its re-issue. Contempt proceedings were contemplated on the basis that the combination of the content of *David and Goliath* and the timing of its re-issue created a distinct tendency to prejudice the Crown's fair trial interests in the *Bain* case.

Once the *Bain* re-trial had been completed the Solicitor-General ultimately decided that contempt proceedings should not be filed in respect of the book. He primarily reached that conclusion in light of the (then) recent decision of the High Court in *Solicitor-General v Fairfax*, HC Wellington, CIV-2008-485-705, 10 October 2008. On the facts, that case sets a very high standard for establishing contempt.

Regardless of whether the Solicitor-General could have proven beyond reasonable doubt that the timing of 2007 re-issue of *David and Goliath* created a real risk to the fairness of the *Bain* trial, it remains his view that the decision to re-issue the book was extremely irresponsible.

Yours faithfully


Madeleine Laracy
Crown Counsel