IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.147/83

BETWEEN THE MINISTER OF FOREIGN AFFAIRS

First Appellant

AND THE MINISTER OF IMMIGRATION

Second Appellant

AND JAGPAL SINGH BENIPAL

Respondent

Coram: Woodhouse P.
Richardson J.
Sir Thaddeus McCarthy

Hearing: 21st May 1984

Counsel: R. B. Squire and M. J. Ruffin for appellants
R. P. G. Haines for respondent

Judgment: 20th July 1984

JUDGMENT OF WOODHOUSE P.

This is an appeal against interlocutory orders made by Chilwell J. at the outset of hearing an application for judicial review. The Ministers of Foreign Affairs and of Immigration had refused an application by Jagpal Singh Benipal for refugee status in New Zealand with permission to stay here. The substantive issue in the High Court amounts to a natural justice challenge to the process which led to that decision.

The interlocutory orders are intended to preserve the confidentiality of documentary material (in the form of an affidavit and an annexure) which had been placed before Chilwell J. on Benipal's behalf without counsel on the other

side seeing it. At the same time Benipal's counsel was permitted to address a communication to the Judge in a sealed envelope. The orders themselves would provide all of the material with such a degree of immunity from disclosure that whatever its real importance the other side could make no challenge to it by way of cross-examination or any kind of inquiry. All this is said to have amounted to a miscarriage of justice. A complaint is made as well that one of the reasons given by the Judge for making such orders amounted to a predetermination of the probative value and so the significance for the case of what had been put before him. He described the affidavit and annexure as "... a very important document which advances the applicant's case and which tends to establish his credibility on important issues"; and added, "There is a real danger, if the document comes to the notice of the Indian government, that the person who sent it to the applicant is in real danger of arrest, torture or death".

The appeal turns upon the way in which the orders were made and also the extent of the immunity. It is clear that at no stage before the orders were made had counsel for the Ministers seen the affidavit or its annexure. Nor were they supplied with or given an opportunity to reply to the communication of counsel for Benipal. Subsequently they were permitted to see a copy of the affidavit and the annexure but not the information given to the Judge by counsel in the sealed envelope. As to that last matter an argument was advanced to the effect that there was nothing on the face of the affidavit and the annexure which would justify the Judge's conclusion concerning the importance of the material or the consequences

that might arise if it were published so that he must have reached his conclusion accepting the advice given him privately by counsel.

Benipal is an Indian national and a Sikh. On 15th May 1983 he entered New Zealand illegally by use of a Dutch passport. The fact was discovered within fourteen hours whereupon he was taken into custody. At that stage he sought refugee status in terms of the United Nations Convention relating to the Status of Refugees adopted in Geneva on 28th July 1951 and which was acceded to by the New Zealand Government on 30th June 1960. To support his request Benipal claimed that he had been a leader of a Sikh separatist movement in India; that by reason of his activities he had twice been arrested there; that he had been tortured and beaten; and that he had fled the country when he became aware that a new warrant had been issued for his arrest.

The application for political refugee status led to an interview by a member of the Interdepartmental Committee on Refugees for this country. The committee met to consider the application, and its decision to recommend that the application be declined by the two Ministers was accepted by them. Benipal was notified to that effect on 31st May 1983. Steps were then taken to have him deported, but he was given legal assistance. Submissions then made on his behalf resulted in further consideration by the committee which again recommended that the application be declined. However, on receipt of still further representations the committee decided to re-hear the whole case. It met for the purpose at Mt. Eden prison on 16th August 1983. The respondent himself was heard together with two other persons

called by him to support the application. Nonetheless the committee's opinion remained unaltered and its recommendation that the application be declined once again was accepted by the two Ministers. Benipal was advised accordingly by letter dated 25th August 1983. Thereupon the review proceedings were commenced before Chilwell J. in the High Court at Auckland.

The hearing began on 12th October. The following day the order, already mentioned, was made by the Judge in circumstances which are best described in a memorandum and an accompanying minute of the Judge himself:

"MEMORANDUM

At Judicial Conference 12th October 1983, after argument, I inspected the document referred to in the next minute in the presence of counsel. Document not shown to Counsel for Respondents. Subsequently the following ruling was given.

Ruling

Mr. Haines given permission to address a written memorandum as to:

a) How document obtained

b) Who is affected or likely to be affected in India by its disclosure.

To be delivered to me in a sealed envelope by 5.45 p.m.

MINUTE 13/10/83

Application of applicant for a form of immunity from disclosure of certain document he wishes to produce in evidence.

Now that I have examined the document and the affidavit to which it is annexed and the memorandum of Mr Haines submitted in confidence, I am satisfied:-

a) That the document is a very important document which advances the applicant's case and which tends to establish his credibility on essential issues.

b) That there is a real danger, if the document comes to the notice of the Indian Government, that the person who sent it to the applicant is in real danger of arrest, torture or death."

At that point a number of orders were made including provision for the affidavit to be listed and referred to as the affidavit of "John Doe"; for it to be kept in the custody of the Judge or registrar; for the Solicitor-General and counsel for the Ministers to have the right to inspect the affidavit and an annexure (but not Mr. Haines' memorandum); and requiring that no copy could be made of it or the annexure. There are further provisions preventing disclosure to any person or cross-examination upon the affidavit or the annexure.

Questions as to admissibility and weight were reserved; and there was "liberty to apply for any further order or direction which will not impugn the immunity granted to the affidavit and its annexure by this order". In the course of the present appeal it was explained by Mr. Squire that his intention to appeal was mentioned immediately after the orders had been made and that he then asked the Judge to deal in a final way with the question as to whether or not the affidavit and annexure would be admitted in evidence. At that point we are told that the Judge formally ruled that the documents were to be admitted. If that is so subsequent suggestions that have been made by Mr. Haines that a right has been reserved to Benipal to withdraw

the affidavit and annexure would appear to have no foundation.

On 9th December 1983 the appeal against the orders came before a Court comprising Cooke, Richardson JJ. and myself. By then counsel for the Ministers had sighted the affidavit and its annexure. However as they had still been denied access to the private statement earlier made in writing by Benipal's counsel to the Judge they were unable to deal with it in any direct way. All this led to some preliminary discussion and following a suggestion from the Bench counsel eventually reached an agreement which it was hoped would put an end to problems faced by the Crown particularly in relation to any wish to challenge the authenticity of the document annexed to the critical affidavit. The matter is evidenced by part of the minute of this Court dated 9th December 1983 as follows:

> "During the hearing the Judges of this Court invited Mr. Haines, who appeared on Benipal's behalf, to consider whether he really could justify withholding all knowledge of a particular part of the written material from counsel on the other side; and after some discussion he agreed that they should be given an opportunity of reading it. This sensible concession, and one which we think was quite inevitable, enabled a discussion to take place which in practical terms may have the effect of resolving the general problem. There now is agreement that certain enquiries should be undertaken in a form which has been approved on both sides subject to the steps to be taken having the approval of this Court. The written memorandum evidencing this agreement is attached as a schedule to this minute and it has the

approval of this Court. In the meantime hearing of the appeal itself is adjourned sine die."

The agreement reached by counsel is contained within the memorandum itself. It reads:

"1. AGREED that letter be written by Solicitor-General in terms that follow below.

2. FORM of letter:

The Chief Judicial Magistrate,
Ludhiana, Punjab, etc.

re: Jagpal Singh son of Harbhajan Singh, formerly a resident of Issru

Jagpal Singh is in New Zealand and has issued proceedings against the Ministers of Immigration and Foreign Affairs.

Could you please advise whether a warrant for the arrest of Jagpal Singh, son of Harbhajan Singh was issued by or on behalf of the Chief Judicial Magistrate, Ludhiana at Khanna or at any other place or court under the jurisdiction of the Chief Judicial Magistrate at Ludhiana.

If a warrant has been issued could you please provide a copy on which I would ask that you place the seal of the Court from or by which the warrant has been issued.

If the warrant does not disclose on its face the offence or offences in respect of which it has been issued, please supply that information by letter accompanying the warrant.

The proceedings will be heard in New Zealand on 1 February 1984.

I would very much appreciate it if you could ensure that your reply is in my hands before that date.

I am grateful for your assistance.

3. COUNSEL for Mr Benipal to advise whether he agrees to copy of letter and any accompanying correspondence being sent to Indian High Commission (N.Z.). In the event of such agreement, copies of all documents to be sent to Counsel for the Respondent.

4. APPEAL to stand adjourned, by consent on the basis

that:

(i) The Court of Appeal to deliver a Minute approving the writing of the letter by the Solicitor-General agreed as to form in para. 2 hereof.

(ii) Outstanding issues on the appeal to be determined in the light of the response, if any, to the Solicitor-General's letter.

(iii) If no reply to the letter is received before 31 January 1984, the parties will confer to discuss the position.

5. A copy of any reply received by the Solicitor-General in response to his letter is to be supplied to Counsel for the Respondent."

Eventually a reply was received to a letter which had been forwarded by the Solicitor-General in the form outlined in paragraph 2 of the memorandum. The letter was sent on 16th December 1983. It was addressed as contemplated to the Chief Judicial Magistrate, Magistrates Court, Ludhiana, Punjab, India, with a copy to the Charge d'Affaires at the Indian High Commission at Wellington. On 3rd February 1984 a letter was received from the High Commission, the text of which reads:

"Dear Sir,

In the absence of the Acting High Commissioner from the station, I am directed to forward the following information obtained from the authorities in India, as required by you in your letter of 16th December, 1983:

'CHIEF MAGISTRATE LUDHIANA CONFIRMED THAT NO WARRANTS OF ARREST FOR THE PRODUCTION OF SHRI JAGPAL SINGH

BENIPAL SON OF HARBHAJAN SINGH, FORMERLY RESIDENT OF SISRU, HAD BEEN ISSUED BY A COURT IN HIS JURISDICTION.'

Yours faithfully"

Most regrettably as I think, despite the fact that Benipal's counsel had been successful in placing the earlier material before the Court in the unorthodox fashion already described, he now objected to production of the foregoing letter even for the purpose of enabling the Judge to make up his mind whether in the interests of justice it would need to be considered beside the documents already accepted. In that situation a formal motion had to be filed on behalf of the Ministers seeking admission of the letter. That motion was opposed at a hearing on 5th April, and on 2nd May it was dismissed. Accordingly the appeal against the interlocutory orders had to come back for formal attention by this Court and in the absence of Cooke J. who is overseas it has been heard ab initio by a reconstituted Court.

When the application was made for non-disclosure counsel for the two Ministers advised that there would be no objection to some form of order preventing public access to the documentary material if this turned out to be necessary. They did claim nonetheless, as a fundamental principle of the adversary system and for reasons of fairness, that the documents being examined by the Judge should be shown to them before he made any orders so that appropriate submissions could be presented concerning the need for and extent of any immunity with the conventional right to cross-examine upon them and make enquiries for the purpose. However, as the minute itself discloses, such an opportunity was denied them; nor were they

provided with a copy of the private communication which Mr. Haines was permitted to make to the Judge. Indeed when the hearing of the appeal began in this Court in December counsel were still unaware of the contents of that communication and Mr. Haines still imagined that it would be quite appropriate for such a situation to continue.

Thus the central questions which arise are, first, whether the process by which orders came to be made against information and a submission undisclosed to the other side amounted in itself to a miscarriage of justice; and second whether there was jurisdiction to place a complete embargo upon any possible challenge to the authenticity of the affidavit and the annexure to it. I am quite satisfied that the answer to the first of those questions is clearly "yes" and to the second "no".

In its simplest form the argument advanced on Benipal's behalf in support of the interlocutory orders is that a Judge, by calling on the inherent jurisdiction of the Court, is able to use what would amount to a wholly untramelled discretion to change the character of the proceedings. It is said that he is entitled to ignore the basic audi alteram partem principle in order to surround one litigant or his affairs with total confidentiality even to the point of excluding the other from knowledge of what the Judge was being asked to take into account. No authority was cited for that proposition. Instead an attempt was made to argue the matter by analogy. Reference was made, for example, to use of the inherent jurisdiction to exclude material from public knowledge or examination; for that

purpose to direct in camera hearings; to keep secret process information restricted to counsel for an interested party; to prior judicial inspection of Crown documents when doubts have arisen as to the jusitification of a claim for public interest immunity. So far as it goes all this is clear enough. Exceptional steps of a procedural kind are very occasionally adopted by the courts where this is essential in the interests of justice. But none of those examples involves the objectionable and irregular influence of listening only to one side. And that in my opinion is the critical issue in this case.

The whole purpose of a court of justice is to provide a forum where the opposing points of view of those in contention can be brought forward by them and then be weighed judicially the one against the other. When that is done the answer will be accepted as a judicial decision, not because it is the product of judicial wisdom or experience or knowledge but because it is a decision which has been judicially arrived at. That process and that objective are inseparable. It is in no way procedural in any ordinary sense. It is the central aspect of a system of justice which will not accept subjective conclusions affected by personal investigations of the judge or the influence of impressions he has gained from only one side. Because of its significance in the rapidly developing field of administrative law the audi alteram partem principle is constantly referred to and accepted in that context as fundamental to the achievement of a fair result. It most certainly applies a fortiori to the courts from which it is derived.

In the judgment about to be delivered by Richardson J. and with which I am in general agreement there is reference to

three cases which were not cited by counsel but which bear upon the matter in a broad way. Two of those cases are concerned with wardship proceedings and the paramount interests of children. Accordingly they are to be regarded as in a special and peculiar class of their own. I would simply add that the marked division of judicial opinion which had arisen in England concerning the possibility of withholding confidential reports from parents when put against the clear imperatives of natural justice principles reinforces if anything the need for the courts to act upon those principles as essential components of our system of justice. The third case, which is concerned with an express statutory provision in favour of confidentiality as against the provisions of a written constitution, may also be regarded as within a special class of its own. In any event the considerations which arose in those cases have no relevance at all for present purposes. Whether they might have some possible application for New Zealand I rather doubt but I would prefer to leave that matter open for decision should the need to do so ever arise.

In the result I am left in no doubt that the orders under review were improperly made. I am equally satisfied that the level of immunity which was intended to exclude all challenge to authenticity of the material goes far beyond what could be regarded as justifiable.

The Court being unanimous the appeal is allowed and the orders under review are quashed. In the absence of Chilwell J. who is on leave until 1985 the question as to what should be done, if anything, about the motion which gave rise to the

orders may require attention by another High Court Judge and the matter is remitted to the High Court accordingly.

SOLICITORS:

Crown Law Office
J. E. Long Esq. of Auckland for respondent

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First Appellant

A N D THE MINISTER OF IMMIGRATION

Second Appellant

A N D JAGPAL SINGH BENIPAL

Respondent

Coram: Woodhouse P
Richardson J
Sir Thaddeus McCarthy

Hearing: 21 May 1984

Counsel: R B Squire and M J Ruffin for Appellants
R P G Haines for Respondent

Judgment: 20 July 1984

JUDGMENT OF RICHARDSON J

This appeal against an interlocutory order made by Chilwell J raises 2 distinct but related questions concerning the nature of the hearing to which litigants are entitled in our courts. The first is whether the Judge acted wrongly in making the order without first allowing the appellant Ministers or their counsel to see documentary material tendered by the respondent's counsel to which the order was then directed. The potential

significance of the basic document is reflected in the Judge's observation that it was "a very important document which advances the applicant's case and tends to establish his credibility on essential issues". The second is whether the Judge acted wrongly in attaching the immunity which he then conferred in the order on that document. He allowed counsel for the appellant Ministers to inspect the document (and the affidavit exhibiting it) under the supervision of the Registrar. But nothing more. Cross-examination on the affidavit and the annexure was to be prohibited. The Ministers were not to be told the contents of the documents and counsel for the Ministers were not to see the memorandum of counsel for the respondent which had raised the matter. For reasons which I can express quite shortly I am satisfied that the Judge erred on both counts.

The right to a fair hearing in the courts is an elementary principle of British justice which reflects the historical insistence of the common law that disputes be settled in a fair, open and even-handed way. And that concept of a fair hearing in the courts necessarily involves the right to have notice of the opposing case and the right to challenge it by cross-examination, by evidence, and by argument. The reasons are obvious enough. As Upjohn LJ said in In re K (Infants) [1963] 1 Ch 381, 405-406:

> " It seems to be fundamental to any judicial inquiry that a person or other properly interested party must have the right to see all the information put before the judge, to comment on it, to challenge it and if needs be

> to combat it, and to try to establish by contrary evidence that it is wrong. It cannot be withheld from him in whole or in part. If it is so withheld and yet the judge takes such information into account in reaching his conclusion without disclosure to those parties who are properly and naturally vitally concerned, the proceedings cannot be described as judicial. "

Again, in Lord Denning's words the same year in Kanda v Government of the Federation of Malaya [1962] AC 322, 337-338:

> " If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them... It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing. "

Even so, in rare classes of cases it has been accepted in England that a balancing of competing public interests may require the withholding of information from one of the parties. There are 2 recent judgments of the House of Lords and one of the Privy Council which are in point. The first is In re K itself: [1965] AC 201. The trial judge in a custody matter had ruled that he was entitled to receive confidential reports from the Official Solicitor without disclosing them to the mother, who was a party in the wardship proceedings. Their Lordships faced what was described as an acute conflict between 2 principles. On the

one hand is the basic concept that (in the words of Lord Hodson p 234) it is contrary to natural justice that the contentions of one party in a judicial proceeding may be overruled by considerations in the judicial mind which that party has no opportunity of criticising or contradicting because he or she does not know what they are. On the other there is the stark issue in custody matters that because the welfare of the child must be the paramount consideration it cannot be right to insist on a course which in the view of the judge will do harm to the child. Their Lordships' conclusion was that the disclosure of confidential reports in wardship proceedings was a matter of discretion for the judge and the mother was not entitled as of right to see the reports.

There are 2 threads running through the judgments which deserve emphasis. The first is the fundamental importance of compliance with the principles of natural justice which Lord Devlin expressed in this passage from his judgment (pp 237-238):

> " All justice flows from the prerogative. Save in so far as their powers are limited by statute, all judges do as they think fit. But what 'they think fit' is not determined by each individually and ad hoc; it is determined by their collective wisdom and embodied in judge-made rules. In the field of procedure these rules are those which Upjohn LJ in the Court of Appeal rightly called '... the ordinary principles of a judicial inquiry.' They include the rules that all justice shall be done openly and that it shall be done only after a fair hearing; and also the rule that is in point here, namely, that judgment shall be given only upon evidence that is made known to all parties. "

Then he said:

> " Some of these principles are so fundamental that they must be observed by everyone who is acting judicially, whether he is sitting in a court of law or not; and these are called the principles of natural justice. The rule in point here is undoubtedly one of those. "

The second point was said to be that in any case where the full application of natural justice is under challenge it is necessary to determine the true character of the proceeding and what is its end or purpose (Lord Evershed p 217). In that case the High Court was exercising its wardship jurisdiction with the paramount consideration being the welfare of the child. In other words the proceedings were not fully adversarial in the sense of being limited to the claim of one party against that of another. It was that special feature of the proceedings which justified a departure from the regular principles of natural justice and it was in that context that Lord Evershed said at p 219:

> " The judge must in exercising this jurisdiction act judicially; but the means whereby he reaches his conclusion must not be more important than the end. The procedure and rules, in the language of Ungoed-Thomas J, should serve and not thwart the purpose. "

Lord Devlin made some observations to the same effect (p 238). Then adopting the principle expressed by Viscount Haldane in Scott v Scott [1913] AC 417, 438 in relation to any suggested encroachment on the duty to conduct court proceedings in public - "the question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient.

The latter must treat it as one of principle, and as turning, not on convenience, but on necessity" (Viscount Haldane p 438) - Lord Devlin concluded (p 239): "That test is not easy to pass. It is not enough to show that dispensation would be convenient. It must be shown that it is a matter of necessity in order to avoid the subordination of the ends of justice to the means".

Lord Devlin then went on to crystallise the distinction between ordinary adversary proceedings between the parties in which natural justice must prevail and those exceptional cases where there are other persons involved whose interests may have to be protected. As to that he said (pp 240-241):

> " Where the judge sits purely as an arbiter and relies on the parties for his information, the parties have a correlative right that he should act only on information which they have had the opportunity of testing. Where the judge is not sitting purely or even primarily, as an arbiter but is charged with the paramount duty of protecting the interests of one outside the conflict, a rule that is designed for just arbitrament cannot in all circumstances prevail. "

The next case is Collymore v Attorney-General [1970] AC 538. The question there was whether provisions of the Industrial Stabilisation Act 1965 of Trinidad and Tobago infringed the guarantees provided for under the Constitution and were accordingly of no effect. One issue was whether a section of the statute which expressly enabled the Industrial Court to come to a conclusion on the basis of information which it could keep secret contravened the right to a fair hearing under the

Constitution. The Judicial Committee applied the final passage cited from Lord Devlin's judgment, concluding that in cases before the Industrial Court the issue is not solely between the employers and the employed, the people of Trinidad also being parties, and that in discharging its duty to take into account certain national employment and economic goals the Industrial Court might well have to seek information which it felt could not be disclosed to the parties before it. The Judicial Committee accordingly held that the statutory provision did not violate the Constitutional guarantee.

The third case is B v W [1979] 1 WLR 1041. That too was a custody appeal. The Court of Appeal had received and to a large extent acted on the report of a social worker without letting the grandfather (appellant in the House of Lords) see the document. Their Lordships summarily concluded that the Court of Appeal had failed to meet the requirements of natural justice. Viscount Dilhorne described it as "astonishing" conduct (p 1049). Lord Edmund-Davies considered that the Court of Appeal judges had acted "irregularly and unjustly" (p 1051) and Lord Keith of Kinkel that the Court had "gone beyond its proper function" (pp 1053-1054).

It seems that Chilwell J's attention was not directed to any of these authorities. At least Mr Haines who submitted the private memorandum to the Judge did not canvass these cases in argument before this Court. His submissions were directed more

broadly to the ambit of the inherent jurisdiction of the High Court, to the discretion of the Court under s 35 of the Evidence Amendment Act (No 2) 1980 to excuse a witness from disclosing confidences and to the preservation of privacy and the protection of confidential information in matters of discovery as in Church of Scientology of California v Department of Health and Security [1979] 3 All ER 97 and Warner-Lambert Co v Glaxo Laboratories Limited [1975] RPC 354 which in New Zealand now need to be read in the light of our recent judgments in Fletcher Timber Limited v The Attorney-General (CA 120/83 judgment 18 April 1984).

I am satisfied there is no justification in principle or authority for the course which Chilwell J adopted and the immunity order which he made in this case. Cases in other jurisdictions where material received in evidence has been suppressed from other parties to the litigation are wholly exceptional and far removed from the present case. These are adversary proceedings in which the respondent seeks judicial review of the decision of the appellant Ministers refusing him refugee status in New Zealand. The High Court is not acting in a quasi-paternal capacity. It is resolving rights as between the parties in the ordinary adversary way. There is nothing I can discern in either the Immigration Act 1964 or the Judicature Amendment Act 1972 which suggests a duty on the part of the High Court in this case to protect the interests of other persons so as to override the right of a party to know the case he has to meet and to deny

him the opportunity of challenging it by calling evidence and by cross-examination. And the opportunity which the order gives to counsel to inspect the document - without disclosure to their clients - is not an acceptable alternative. That course could be appropriate only if jurisdiction distinctly existed to withhold the document from the party himself. It would be appropriate then in order to ameliorate the encroachment by reason of necessity on the application of natural justice in those proceedings. It is a second best and inadequate at that. For how can counsel be expected to conduct a case where he is dealing with his client across an information barrier and where he is deprived of the opportunity to test the secret information by the standard forensic methods of cross-examination and the adducing of further evidence.

Finally, I am satisfied that the Judge erred in taking his first step in the matter. He made his orders after listening to one side only and on the basis of secret evidence and secret submissions. In my view there was no occasion, let alone a compelling necessity, for this departure from fundamental principles of natural justice.

I would quash the orders made by Chilwell J and remit the matter to the High Court for reconsideration there. The appellants will be entitled to know, to check and to challenge the material produced against them. Subject to that and acting in its inherent jurisdiction conformably with natural justice

the High Court may of course make such limited orders governing and restricting disclosure of material of that kind as it considers necessary in the interests of justice. It may also consider hearing the evidence on that issue in camera or imposing restrictions on the reporting of that part of the proceedings. By those means it may do what it reasonably can to prevent the identification of the person responsible for sending the critical document to the respondent.

Solicitors:

Crown Law Office
J E Long, Auckland, for respondent

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R P G Haines for Respondent

Judgment: 20 July 1984

JUDGMENT OF SIR THADDEUS McCARTHY

I have read the judgment prepared by Richardson J. I agree with it and have nothing to add. I would make the order proposed by the President.

Solicitors:

Crown Law Office, Wellington, for Appellants

J.E. Long, Auckland, for Respondent