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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A.487/83

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IN THE MATTER of the Official Information
Act 1982

A N D

IN THE MATTER of Part 1 of the Judicature
Amendment Act 1972

BETWEEN KENNETH OWEN THOMPSON
of Wellington, Commissioner
of Police
First Applicant

A N D JAMES WILFRED McGUIRE
of Lower Hutt, Superintendent
of Police
Second Applicant

A N D GEORGE ROBERT LAKING
of Wellington, Chief Ombudsman
First Respondent

A N D REECE OWEN PEARCE
of Upper Hutt, Operator
Second Respondent

Hearing 7 May 1984

Counsel J R F Fardell for first and second applicants
Brenda Cutress for first respondent
D L Stevens for second respondent
G D S Taylor - Counsel assisting the Court

Judgment 8 May 1984

(ORAL) JUDGMENT OF DAVISON C.J.

Mr Pearce, the second respondent, was charged summarily in the District Court with certain offences. On 1 July 1983, Mr Pearce through his solicitors wrote to the police at Upper Hutt requesting pursuant to ss 12 and 24 of the Official Information Act 1982, a copy of each of the briefs of evidence of the witnesses to be called by the police at the hearing of the charges laid against him.

The second applicant, Superintendent McGuire of the police, declined to make the briefs available upon the grounds that it would be likely to prejudice the maintenance of law, including the right to a fair trial in terms of s 6(c) of the Official Information Act 1982 and that it would amount to the use of official information for improper gain or improper advantage in terms of s 9(2)(k) of the Official Information Act. That decision was reviewed by the former Commissioner, and the decision of Superintendent McGuire to refuse disclosure was upheld.

Mr Pearce then applied to the Ombudsman, the first respondent, to carry out an investigation and to review the decision of the police. The Ombudsman in a report dated 23 September 1983 expressed the opinion that no good reason exists under the Official Information Act for withholding the briefs of evidence from the complainant and that Superintendent McGuire's decision to withhold them was wrong, and the Ombudsman recommended that the information requested be made available to the complainant.

The first and second applicants, who are the Commissioner of Police and Superintendent McGuire respectively, have sought a judicial review of the Ombudsman's decision. The grounds upon which the review is sought are set out particularly in para 14 of the statement of claim which alleges that the Ombudsman in his report has made three errors of law which are set out in full in that paragraph.

The present applicant comes before the Court on a preliminary matter involving the discovery and inspection of documents and it is that matter only with which I deal today. Counsel have prepared for the benefit of the Court a series of issues for the Court's determination and those issues are:

1. Should the material before the Court on the substantive hearing:
 - (a) be limited to the Chief Ombudsman's report; or

- (b) also include the briefs of evidence;
or
 - (c) also include the summary of facts;
or
 - (d) subject to the Ombudsmen Act 1975,
also include documents relating to
the Chief Ombudsman's investigation?
2. What procedure is appropriate to comply
with the Ombudsmen Act 1975?
3. Should the documents in List B or other
documents be:
- (a) filed in camera and considered by
the Court either ex parte or in the
presence of only counsel appointed
as amici curiae; or
 - (b) described only in a detailed manner,
as was required in Vaughn v Rosen
474 F2d 820 (1973); or
 - (c) restricted to counsel only?

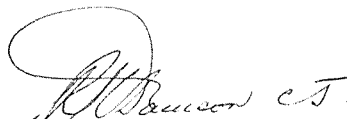
During the course of submissions yesterday,
three different standpoints were advanced by counsel.
For the applicants, Mr Fardell submitted that the only
document necessary to enable the Court to adjudicate upon
the matter at the substantive hearing was the Ombudsman's
report. He based his submissions on the substantial
fact that the challenge to the report was based on three
issues of law and that it was not necessary to traverse
the facts at all for the Court to determine those three
questions.

Dr Taylor, who was appointed as counsel assisting
the Court in the matter, submitted that the Court should
require the various documents to be filed in Court and he
pointed to the three possible ways of dealing with those
documents when they had been filed.

Mr Stevens for Mr Pearce, supported the lodging of the documents in Court, but went further and submitted that the Court should disclose those documents not only to the counsel appointed amici curiae, but also to him, Mr Stevens, counsel for Mr Pearce.

The issue in this case really at the substantive hearing would seem to me to involve a decision of whether or not briefs of evidence are to be made available in summary proceedings under the Official Information Act and that is the substantial question. That will not involve looking into the facts of this case at all.

Counsel for the respondents submitted in a general way that the Court would be helped by knowledge of the facts, but I have come to the view that that is not so and that it will not be necessary to file in the Court anything other than the Report of the Ombudsman, which has already been filed in accordance with the order of Jeffries J. So that, on the preliminary issue, I direct that no documents be lodged in Court other than the Report of the Ombudsman which is already on record.



Solicitors for the Applicants

Crown Law Office
(Wellington)

Solicitors for the First Respondent
and for Counsel Assisting

Office of the Chief
Ombudsman (Wellington)

Solicitors for the Second Respondent

Basil-Jones & Stevens
(Upper Hutt)