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Suppression order of the evidence and submissions concerning the medical condition of the appellant and of the other person referred to in those submissions

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.78/99

BETWEEN

E J

Appellant

A N D

SERIOUS FRAUD OFFICE

Respondent

Date: 23 July 1999

Counsel: RL Ladd and A Steele for Appellant
DRF Gardiner for Respondent

Judgment : 23 July 1999

JUDGMENT OF BARAGWANATH J

*Solicitors: Chamberlains, DX CP24020, Auckland Central for Appellant
Serious Fraud Office, P O Box 1724, Wellesley Street, Auckland for Respondent*

There is listed in the Duty List today, an appeal by the appellant who was declined an order for suppression by a Judge of the District Court.

The prosecution which he faces is brought by the Serious Fraud Office. It is regarded by that office, as one would expect, as a matter of gravity.

The principles that apply have been stated by the Court of Appeal in the leading case of *R v Liddell* [1995] 1 NZLR 538, *Proctor v R* [1997] 1 NZLR 295 and the unreported judgment of *M and O v The Serious Fraud Office* CA 52/96 in judgment 8 July 1996.

It is part of the penalty ultimately visited on a person convicted of serious crime that there should be publicity concerning that conduct.

At this stage prior to conviction, when the presumption of innocence applies, the dominant principle is the different one that justice should, to the greatest extent practicable, be done in public. In his recent report into the death of Steven Lawrence, Sir William McPherson drew to public attention the aphorism of the philosopher Philo that "a judge when judging is himself judged". While expressed quaintly and in a fashion that is now outmoded, it makes the point that the conduct of justice must be done in public to the greatest extent that is attainable to ensure that it is done properly.

In the present case, it is asserted for the appellant that maintenance of the District Court's refusal of suppression would entail actual danger to life of another person.

The material on which that submission is based consists of an unsworn note from a medical practitioner who is not, so far as appears from the letterhead, a specialist in the relevant discipline of psychiatry. I indicated to Mr Ladd my unwillingness to act on the footing of such certificate and enquired why expert evidence had not been put before the Court.

I am sufficiently persuaded by the response given to entertain his application for an adjournment to a date in August to be fixed by the Registrar to allow such evidence to be secured.

The countervailing interests are of such moment that have given notice that the rules of evidence must be complied with. Any expert opinion must be given on oath, in the first instance by affidavit and consideration may be given by the Court to cross-examination.

At the commencement of today's hearing I made an order that the interim suppression order of the District Court be continued until today's judgment, that order to extend to the evidence and submissions concerning the medical condition of the appellant and of the other person referred to in those submissions.

I now extend that order until the commencement of the August hearing. That will not prevent such publication of the present judgment as may be considered appropriate.

The costs of the application which has lasted an hour are reserved.

A handwritten signature in black ink, appearing to be 'W. J. ...', with a checkmark to the right.