IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2015-404-000258
[2015] NZHC 1605

UNDER	The Judicature Amendment Act 1972, Part 30 of the High Court Rules and the Bill of Rights Act 1990
IN THE MATTER OF	an application for judicial review
BETWEEN	E LI Plaintiff
AND	THE DISTRICT COURT First Defendant
	THE COMMISSIONER OF THE NEW ZEALAND POLICE Second Defendant

Hearing:	5 March 2015
Appearances:	F C Deliu for the Plaintiff M R Harborow for the Defendants
Judgment:	5 March 2015
Reasons:	9 July 2015

REASONS JUDGMENT OF DUFFY J

This judgment was delivered by me on 9 July 2015 at 4.00 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Solicitors: Justitia Chambers, Auckland (fdeliu@justitiachambers.co.nz)
Meredith Connell, Auckland (Mark.Harborow@meredithconnell.co.nz)

[1] The plaintiff, Ms Li, was scheduled to be examined by the New Zealand Police on Friday, 6 March 2015, pursuant to an order made under s 107 of the Criminal Proceeds (Recovery) Act 2009 ("the examination order").

[2] On 5 March 2015, I heard Ms Li's application for interim relief in this proceeding in which she challenges the lawfulness of the examination order. The application was heard on an opposed basis, with counsel for Ms Li and the second defendant (the Commissioner) present to advance their respective arguments. The first defendant (the District Court) filed a notice indicating it would abide the Court's decision; however, it also filed a memorandum in which it made submissions on the law and the facts. After the hearing, I delivered a result decision in which I dismissed the application for interim relief. My reasons now follow.

Facts

[3] Van Thanh Tran is a respondent in proceedings brought in this Court for a restraining order, ("the restraining order proceedings").

[4] Bruce Ronald Russell is a member of the New Zealand Police. He filed an affidavit in the restraining order proceedings in support of the Commissioner's application. His affidavit narrates the police investigation into persons including Mr Tran whom the police suspect were engaged in serious criminal conduct involving the importation and distribution of the illicit class B drug, pseudoephedrine.[1]

[5] Mr Tran was arrested on 4 December 2014. At the time of the hearing he was in custody awaiting trial on charges under the Misuse of Drugs Act 1975. He has since pleaded guilty to charges of importation, supply and possession of pseudoephedrine and was sentenced by Venning J to 13 years eight months imprisonment.[2]

[6] Mr Russell deposes that the police are attempting to reconstruct financial transactions in which they suspect Mr Tran was involved either directly or indirectly.

---

1 See sch 2 of the Misuse of Drugs Act 1975.
2 *R v Tran* [2015] NZHC 1545.

They believe that he has an interest in various types of property that is held in the name of third parties. At the time of the hearing this Court has made an interim restraining order against Mr Tran. The substantial hearing of the restraining order proceedings was yet to occur.

[7] The Commissioner suspects that Yanmei Zheng has an association with Mr Tran and that she is someone who may be the legal owner of properties in which Mr Tran has a beneficial interest. In his affidavit Mr Russell sets out the grounds for the police having this belief.

[8] The affidavit describes how Ms Zheng has been seen in Mr Tran's company and that she is "is presumed to be a girlfriend of Mr Tran". The affidavit also sets out circumstances that go to establish Ms Zheng's connection with Mr Tran. The affidavit reveals that Ms Zheng is the registered owner of a motor vehicle, a Toyota Landcruiser, registered number HBH804, which police have seen Mr Tran driving frequently "over the past few weeks".[3]

[9] Mr Russell also states that earlier on 31 October 2013, police intercepted two of Mr Tran's conversations, which appeared to relate to the purchase of this vehicle. The police believe, therefore, that Mr Tran is the person who provided the funds to purchase the vehicle and that Ms Zheng holds the vehicle for his benefit.

[10] Mr Russell also refers to the period between 10 December 2012 and 10 June 2013, when Mr Tran was the registered owner of a 2012 Hyundai Santé Fe 2.2R CRDI Elite, which he purchased new. On 10 June 2013, ownership of the vehicle was transferred to Ms Zheng.

[11] Mr Russell deposes that the illicit drug activity that Mr Tran is alleged to have been involved in is likely to have generated him income of not less than $2.12 million. This is in circumstances where he has no legitimate source of income, and has not had a legitimate source of income for some time.

---

[3] Mr Russell's affidavit was sworn on 2 December 2014.

[12] In his affidavit, Mr Russell refers to Sky City records, which indicate that during the period 1 April 2012 to 7 July 2013, Mr Tran had a turnover (volume of play) exceeding $67 million. He is said to have introduced around $15 million to gaming tables and, after considerable periods of play, removed about $14 million. Thus, overall, he lost about $1.1 million.

[13] The Commissioner is concerned that with the significant sums of cash that police believe Mr Tran has enjoyed access to, he has acquired assets in the names of other persons. Mr Russell deposes that Mr Tran has a practice of distancing himself from asset ownership by placing assets in the names of others, and gives examples of this in the affidavit, including the vehicle registered in Ms Zheng's name. Mr Russell deposes that this practice is not uncommon for those involved in unlawful activity, who perceive themselves to be at risk of asset forfeiture through police intervention.

[14] It is clear from reading Mr Russell's affidavit that the Commissioner is concerned to identify property in which Ms Zheng has an interest, and to see if she may hold any of that property for the benefit of Mr Tran.

[15] In an email Mr Russell sent to solicitors acting for Ms Zheng regarding an examination of her he states that the police suspect Mr Tran has an interest in a number of lots in a subdivision at 248 Porchester Road, Takanini, through Ms Zheng. Ms Li has included this email in the exhibits attached to her affidavit. So whilst it is technically hearsay in this proceeding I consider that Ms Li's reliance on the email, albeit for other purposes, means that she consents to its admission in this proceeding.[4]

[16] Ms Li is the mother of Ms Zheng. The Commissioner is interested to know if Ms Li has acquired property, which she may hold for the benefit of Mr Tran. Hence, his wish to examine her.

---

[4] Further see s 7(3) of the Evidence Act 2006 and the comments of the Supreme Court in *Hart v R* [2010] NZSC 91, [2011] 1 NZLR 1 at [54] that: "[t]he general approach of the Evidence Act does not support the concept of limited admissibility of this kind. The statute proceeds on the basis that generally speaking evidence is either admissible for all purposes or it is not admissible at all."

[17] From what I have read of the information filed in this proceeding, the Commissioner has acknowledged there is no evidence linking Ms Zheng to Mr Tran's criminal behaviour. The same would apply to Ms Li, as there is nothing to suggest that Ms Li has been involved in any criminal conduct, either with Mr Tran or others. However, the way in which Mr Tran has arranged his affairs has led the Commissioner to seek to examine those who have any association, directly or indirectly, with Mr Tran.

[18] The examination order against Ms Li was obtained without notice. Ms Li has now chosen to resist the examination order through challenging it in this proceeding.

[19] Ms Li has filed an affidavit in which she deposes that she has no relationship with Mr Tran, and she does not own, or have a beneficial interest in any of the property that is identified in the examination order. Her affidavit sets out her concerns about being questioned by the police. In her view, the connotations of being examined by the police reflect badly upon her. She feels as if she is suspected of being a criminal offender. She rejects the suggestion that her daughter, Ms Zheng, is a girlfriend of Mr Tran. Apart from the emotionally stressful impact on her, her view of the examination order is expressed in short in paragraph 29 of her affidavit, where she says:

> So, as I understand matters, even though there is no evidence that my daughter has done anything wrong and even though there is no evidence that I have done anything wrong, merely because the police assume out of thin air that my daughter was once Mr Tran's girlfriend, I need to be subjected to an examination order. I do not think this can be just, much less legal.

[20] Relevant legislative provisions

[21] Section 107 of the Criminal Proceeds (Recovery) Act 2009 ("the Act") sets out the power of a Judge to make an order, amongst other things, that a person attend before the Commissioner and answer questions with respect to any matter that the Commissioner has reason to believe may be relevant to the investigation or to any proceedings under the Act. The section provides that, on an application made under s 106 of the Act, the Judge "may" make the order "if satisfied that the Commissioner has reasonable grounds to apply for the examination order". Subsection (7) provides

that any person who is required to attend before the Commissioner under the section must, before being required to comply with any requirements imposed under the section, be given a reasonable opportunity to arrange for a lawyer to accompany him or her.

[22] Section 106 sets out the process for the Commissioner to apply to a Judge for an examination order. It states:

> **106 Application for examination order**
>
> (1) The Commissioner may apply to a Judge for an examination order under section 107 if the Commissioner has reason to believe that a person is able—
>
> (a) to answer questions with respect to any matter that the Commissioner has reason to believe may be relevant to the investigation or to any proceedings under this Act:
>
> (b) to supply any information with respect to any matter that the Commissioner has reason to believe may be relevant to the investigation or to any proceedings under this Act:
>
> (c) to produce for inspection any documents that the Commissioner has reason to believe are in the person's possession or control or may be relevant to the investigation or to any proceedings under this Act.
>
> (2) Every application under this section must be made in the manner provided in relation to a search warrant in sections 99 and 100 of the Search and Surveillance Act 2012, and must contain the following particulars:
>
> (a) the grounds on which the application is made:
>
> (b) a description of the information that is sought:
>
> (c) a description of the document or documents production of which is sought.
>
> (3) Every person commits an offence who makes an application for an examination order that contains any assertion or other statement known by the person to be false.
>
> (4) Every person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 1 year.

[23] Also relevant is s 93, which concerns the effect of proceedings relating to Commissioner's powers and duties. It states:

> **93 Effect of proceedings relating to Commissioner's powers and duties**
>
> (1) This section applies if any person makes any challenge in any proceeding in any court in respect of—
>
> (a) the exercise by the Commissioner of any power conferred by this Act:
>
> (b) the discharge of any duty imposed on the Commissioner by this Act.
>
> (2) If this section applies, until a final decision (as described in subsection (4)) in relation to those proceedings is given, the power or duty may be, or may continue to be, exercised or discharged as if no such proceedings of that kind had been commenced, and no person is excused from fulfilling any obligation under this Act by reason of those proceedings.
>
> (3) This section applies despite any other provision of any enactment or rule of law or equity.
>
> (4) A **final decision** does not include a decision in proceedings for an interim order under section 8 of the Judicature Amendment Act 1972.

[24] Where a final decision of the Court declares that the exercise of the Commissioner's powers was unlawful, then any information obtained as a consequence of the exercise of the powers and any record of the information must be destroyed.[5]

[25] Section 94 provides:

> **94 Effect of final decision that exercise of powers unlawful**
>
> (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred on the Commissioner by this Act, that the exercise of any powers conferred on the Commissioner by this Act is unlawful.

---

5 Criminal Proceeds (Recovery) Act 2009, s 94(2).

(2) If this section applies, to the extent to which the exercise of those powers is declared unlawful the Commissioner must ensure that immediately after the decision of the court is given—

(a) any information obtained as a consequence of the exercise of powers declared to be unlawful, and any record of that information, is destroyed:

(b) any documents, or extracts from documents, or other things removed as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of those documents or extracts are destroyed:

(c) any information derived from or based on such information, documents, extracts, or things is destroyed.

(3) Despite subsection (2), the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed,—

(a) be returned to the person from whom it was obtained; or

(b) be retained by the police subject to any terms and conditions that the court imposes.

(4) No information obtained, and no documents or extracts from documents or other things removed, as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or documents,—

(a) is admissible as evidence in any proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:

(b) may be used in connection with the exercise of any power conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Ms Li's arguments

[26] Ms Li points to the Commissioner's acknowledgement that there is no evidence linking her daughter, Ms Zheng, to Mr Tran's criminal behaviour. Ms Li also points to the Commissioner's acknowledgement there is no suggestion that she

is associated with Mr Tran's offending in any way. Ms Li argues that the evidence to connect Ms Zheng with Mr Tran is flimsy, and that it is no more than a presumption that Ms Zheng is a girlfriend of Mr Tran. Thus, Ms Li contends that factually there is no evidential basis for the Commissioner to assert that any property in which she may have an interest is related to Mr Tran's offending, or has been acquired with proceeds of Mr Tran's alleged offending. Therefore, she argues, there is no proper basis for the examination order. She complains that the order was made without notice and obtained from the District Court at Hamilton in circumstances where this Court is already seized of jurisdiction in the proceedings the Commissioner brings against Mr Tran. She complains that she has not been able to access the documentation that went before the District Court that made the examination order. She also complains that she has been unable in the time available to her to obtain discovery orders from this Court. She argues, therefore, that her ability to challenge the examination order has been prejudiced.

[27] Ms Li then refers to the importance of judicial review and the role of this Court in exercising its supervisory jurisdiction over the decisions and conduct of inferior courts and tribunals.[6]

[28] Ms Li acknowledges there is one authority in this area, *Yan v Commissioner of Police*[7] that on its face may appear adverse to her position, but she submits the decision was wrongly decided, being made under urgency and, in any event, it is distinguishable evidentially and substantively.

[29] Regarding the legal claims Ms Li makes, her submissions are as follows. She argues it was improper for the District Court to make the examination order on a "without notice" basis. Here, she relies on *Commissioner of Police v Burgess* and *Commissioner of Police v Green*.[8] In reliance on these authorities, she argues that

---

6 *R v Horseferry Road Magistrates Court*, *ex parte Bennett* [1994] 1 AC 42 (HL); *Auckland District Court v Attorney-General* [1993] 2 NZLR 129 (CA) at 133; *R v Somerset County Council*, *ex parte Dixon* [1998] Env LR 111 (QB); and see the commentary in Phillip A Joseph *Constitutional and Administration Law in New Zealand* (3rd edition, Brookers, Wellington, 2007) at [6.2.2].

7 *Yan v Commissioner of Police* [2015] NZHC 141.

8 *Commissioner of Police v Burgess* [2011] 2 NZLR 703 (HC), affirmed by the Court of Appeal in *Commissioner of Police v Burgess* [2012] NZCA 436; and *Commissioner of Police v Green* HC Wellington CIV-2010-485-964, 1 August 2011 at [25].

given there is no evidence linking her daughter, Ms Zheng, to Mr Tran's criminal behaviour and no suggestion she is associated with offending in any way, this material should have been disclosed to the District Court.[9]

[30] Secondly, she argues that there is no evidence to support the examination order. However, here, she acknowledges that she cannot argue this ground in the context of the interim relief hearing absent discovery. However, she refers this Court to the examination order that states:

> 2. The application has been made in writing and the truth and accuracy of its contents have been confirmed by the applicant.

She argues there is no reference to any actual evidence having been tendered in support. She also argues that the District Court in its memorandum of 3 March 2015 has admitted as much.

[31] Ms Li attempts to query whether Mr Russell, who obtained the examination order, can be treated as a credible witness, given his deposition in his affidavit to this Court to the effect that Ms Zheng had been noted in Mr Tran's company and was presumed to be a girlfriend of Mr Tran. She concludes this submission with the argument that there appears to be no dispute that there was no evidence in support of the application.

[32] Thirdly, she argues there were no reasons given by the District Court for making the examination order. Here, she relies on the principle in *Lewis v Wilson & Horton Ltd.*[10] She submits that the apparent strength of her case in judicial review is established by the lack of reasons.

[33] Fourthly, she argues that there has been a failure to apply the proper legal test and bias. Here, she argues that s 107 of the Act has a very specific test, which is not at all referred to in the order. Given the lack of reasons, she contends it can also be argued that the judicial officer never turned her mind to the questions she had to decide, much less that she had the discretion to refuse an order, even if the threshold

---

9 *Marwood v Commissioner of Police* [2012] NZHC 872 at [15].
10 *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA).

was met.[11] Ms Li argues that because the Commissioner made assertions, the District Court acted as a "rubber stamp" or "paid lip service" to "the process".[12] Ms Li contends this would be a form of apparent bias.[13] She concludes this ground with the argument that there is no indication whatsoever that the law was applied.

[34] Fifthly, whilst arguing the lack of discovery makes it impossible to fully argue this ground, she asserts that there is no indication that s 106(2) of the Act was complied with. She refers to ss 100(3) and (4), and 98(1)(g) and (5) of the Search of the Surveillance Act 2012, and argues the order is ultra vires.

[35] Sixthly, she argues that the circumstances in which the examination order was made make it in breach of natural justice and a mistake of law. She argues that she has been denied access to Court files that would substantiate the legality of the examination order made against her. She refers to the first respondent having refused access to the file, in spite of accepting the examination order was being made in the context of criminal proceedings. Here, Ms Li asserts that *R v Dean*,[14] is authority for the proposition that a preliminary issue in a criminal proceeding can be sufficient to engage the right of access. She then argues that the District Court acted under an error of law as the search of criminal files is civil in nature.[15] She argues if the proceeding is civil in nature, then the District Court erred in law or in any event, even applying criminal regulations Ms Li asserts that she had an entitlement to access. Accordingly, the District Court was wrong to deny access.

[36] Next, Ms Li argues there has been a breach of the right to counsel. She refers to s 107(7) of the Act, which provides for a right to counsel. She refers to the general principle, which has been given international recognition, of the right to counsel being aimed at "ensuring the proper administration of justice and must be

---

11 See *Commissioner of Police v Burgess* (HC), above n 8, at [18]; and *Marwood v Commissioner of Police*, above n 9, at [16].

12 Citing *H v Minister of Immigration* CIV-2008-404-4139, 21 July 2008.

13 Citing *Saxmere Company Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 122, [2010] 1 NZLR 76; and *Muir v Commissioner of Inland Revenue* [2007] NZCA 334, [2007] 3 NZLR 495.

14 *R v Dean* [2005] 2 NZLR 323 (CA).

15 *Wong v Registrar of the Auckland High Court* [2008] 1 NZLR 849 (HC) at [3] citing *Mafart v Television New Zealand Ltd* [2006] NZSC 33, [2006] 3 NZLR 18.

practical and effective rather than theoretical or illusory".[16] Here, she argues that while she is entitled to have a lawyer attend the interview with her, she is not entitled to have that lawyer actually accurately consider her position, give her proper advice, take and receive instructions. She submits the right to counsel without access to the files is no more than a superficial window-dressing and so is manifestly illegal.

[37] Finally, she argues there has been a failure by the District Court to take into account relevant considerations. She argues the District Court failed to consider the point that she wanted access to its files for possible use in these proceedings, despite this being brought to the District Court's attention. She notes, as recognised in *Cao v Ministry of Business, Innovation and Employment*, even where the statute prevents a document from being made available to a member of the public, it nonetheless may be available for litigation purposes.[17] She argues that here, there was no express prohibition on release, so the District Court should have considered her legitimate request as part of the overall consideration of whether or not to grant access.

[38] Having set out the legal grounds on which she bases her claim against the respondents in terms of interim relief, Ms Li argued that her position needed to be preserved: first, because she had a strong case; secondly, she has little, if anything, to assist in the examination, which she describes as a "fishing expedition"; thirdly, she will suffer irreparable medical harm if compelled to attend. Here, she relied on the psychologist's report and her own evidence regarding the stress the possibility of being examined has brought upon her. Fourthly, she argues that her answers may be used in subsequent proceedings to restrain, or even forfeit her property and, as such, she has a real and serious interest in the status quo being preserved pending an outcome of the proceedings.

[39] As regards the Commissioner, she argues that the Commissioner will not be prejudiced. She points to the Commissioner having not served a notice of opposition. She argues that the Commissioner, therefore, has no standing to be heard and that, in any event, he cannot be prejudiced by interim relief. Here, she contends that the Commissioner's examinations have been afoot since 2012, but he has only

---

16 *Barrie v R* [2012] NZCA 485, [2013] 1 NZLR 55 at [22] (citations omitted).

17 *Cao v Ministry of Business, Innovation and Employment* [2014] NZHC 1551, [2014] NZAR 871.

seen fit to examine Ms Li in 2015. She contends that his investigations are, in any event, able to continue unimpeded by interim relief. In this respect, she argues that an order preventing her from being interviewed will have no impact on the Commissioner's exercise of powers vis-à-vis Mr Tran, other criminals or Ms Zheng. Ms Li is also critical of the response the District Court has taken in the proceeding.

[40] In conclusion, she argues that interim relief should be ordered, as there was no inter partes process, no evidence to support the application, no reasons given as to why the application was granted, nothing to indicate the legal test in s 107 was contemplated, much less actually applied, and she argues that there are other indications the law was not considered.

The Commissioner's arguments

[41] The Commissioner opposes the making of interim relief on purely legal grounds. First, he argues that pursuant to s 93 of the Act, he is entitled to continue with an examination, notwithstanding any interim orders made by the High Court. Therefore, the ordering of interim relief is rendered futile, and the grounds of the underlying application for judicial review are weak. The Commissioner contends that s 93 applies, as the proceeding in this Court is in respect of the exercise of the Commissioner's power under the Act to seek an examination order. The Commissioner relies on s 93(4), which confirms that a final decision does not include a decision in proceedings for an interim order under s 8 of the Judicature Amendment Act 1972.

[42] The Commissioner argues that s 93 is to be read alongside s 94, which, in his submission, provides the remedy, if the Commissioner's actions are ultimately held to be unlawful. In this regard, the Commissioner draws attention to s 94, which has various requirements relating to the destruction and/or return of information gathered. He argues the legislative intent is clear. Notwithstanding a legal challenge, he is entitled to proceed as if no such challenge existed. That is so, even if the Court grants interim relief. The Commissioner argues that there are parallels between ss 93 and 94 and ss 21 and 22 of the Serious Fraud Office Act 1990. He draws attention to the decision in *Hawkins v Sturt*, where ss 21 and 22 of the Serious

Fraud Office Act were the subject of judicial discussion. In that case, Thomas J noted that:[18]

> Courts have historically been unwilling to grant injunctive relief which would have no force or effect.

Thomas J saw s 21 of the Serious Fraud Office Act as indicating the intention of the legislature to avoid investigations being frustrated by legal proceedings. Such investigations were not beyond the bounds of the law because of the remedy provided by s 22.

[43] The Commissioner argues, in the present case, even if the Court were minded to grant interim relief, that would not prevent the examination from occurring, nor would it excuse Ms Li from attending. Referring to Thomas J in *Hawkins v Sturt*, the Commissioner argues that this Court should not grant relief where it is futile to do so.

[44] The Commissioner also refers to *Yan v Commissioner of Police*,[19] which he contends was decided in almost identical circumstances to the present. In *Yan*, the applicant sought interim relief against an examination order under ss 106 and 107 of the Act. In *Yan*, Ellis J followed the comments of Thomas J in *Hawkins v Sturt*. Ellis J stated:[20]

> … there is nothing in the legislative history to suggest that, in determining that examination orders should be authorised by a Judge, Parliament also intended to permit the conduct of any examination so authorised to be stymied by orders for interim relief. Such an interpretation would involve a complete reversal of the position under the Bill as originally drafted and might accordingly be expected to have been the subject of comment either by the Select Committee or the House.

In addition, Ellis J was sceptical of the underlying merits of the claim in *Yan*. She considered the principles set out in the Court of Appeal's decision in *Commissioner of Police v Burgess*, which supported an adjournment of proceedings under the Act

---

18 *Hawkins v Sturt* (1990) 5 NZCLC 66,606 (HC) at 66,610.
19 *Yan v Commissioner of Police*, above n 7.
20 At [31].

until after a criminal trial were of no application as in *Yan*, the examinee was not facing a criminal trial.[21] The Commissioner argues the same is the case here.

[45] The Commissioner also argues that examination orders are analogous to search warrants. He acknowledges that unlike a notice issued by the Director of the Serious Fraud Office (see s 9), with examination orders, he must first seek and obtain judicial approval for an examination order. This requirement was imposed during the passage of the Act when the Law and Order Select Committee considered "replacing the notice power with the power to seek examination order with judicial oversight will provide better safeguards".[22] Having drawn an analogy between examination orders and search warrants, both entailing prior judicial authorisation, the Commissioner argues that in respect of search warrants, judicial review has been recognised not to be an appropriate review mechanism. The Commissioner cites *Gill v Attorney-General*,[23] where the Court was dealing with an appeal from a judicial review of the issue of a search warrant against Dr Gill, and contends that in that case, the Court considered the limitations of judicial review in the context of an investigation was self-evident:[24]

> Judicial review will rarely be appropriate where there is a readily-available alternative remedy, and in particular the Courts have held that they will only interfere in matters which involve the exercise of a prosecutorial discretion or investigative power in exceptional cases.

[46] The Commissioner acknowledges that the Court in *Gill* noted that it had previously entertained challenges by way of judicial review where there was a defect in the warrant of a "fundamental nature", where the matter could be seen to go to the jurisdiction of the issuing officer, or where some other ground of "true unlawfulness" (such as want of jurisdiction) was established.[25]

[47] The Commissioner argues, therefore, that the present case is not an appropriate case for interim relief. Further, such relief could not be effective, given

---

21 At [34].
22 Criminal Proceeds (Recovery) Bill 2009 (81-2) (select committee report) at 5.
23 *Gill v Attorney-General* [2010] NZCA 468, [2011] 1 NZLR 433.
24 At [19].
25 At [20].

ss 93 and 94 of the Act, and, in any event, a challenge by way of pre-emptive judicial review application is not appropriate.

[48] The Commissioner then focused on the strength of Ms Li's case, which he submits is weak. He argues that there was no breach of the audi altrim partem rule, as applications for examination orders are similar to applications for search warrants, which are made without notice. Here, he relies on *Commissioner of Police v Green*.[26] He argues that the ground of review based on no evidence was without any foundation. In the Commissioner's submission, the grant of the examination order itself demonstrates the District Court was satisfied the requirements were made out.

[49] Regarding the ground of failure to give reasons, the Commissioner argues that an examination order is more akin to an authorisation than a decision, so a judgment with reasons is not given. Here, he relies on *Commissioner of Police v Burgess*.[27]

[50] Regarding the ground of failure to apply the legal test, the Commissioner argues the issue of the examination order by the District Court Judge shows that she was satisfied that grounds for it were made out. As Ellis J observed in *Yan*, the threshold of the grant of an examination order has been set deliberately low.[28]

[51] As regards the non-compliance with s 106(2) of the Act and s 100(3)(c), and s 98(1)(g) and (5) of the Search and Surveillance Act, the Commissioner argues the allegations have no evidential foundation. The grant of the examination order itself demonstrates the District Court Judge was satisfied the requirements were made out.

[52] Regarding the allegation of breach of natural justice by not providing Ms Li with Court documents and the breach of the right to counsel, the Commissioner argues that these grounds are merely an extension of the other natural audi altrim partem argument, and proceed from the same fundamental misunderstanding, namely the grant of an examination order is not a judicial decision per se, but a judicial authorisation, which follows an ex parte process. Further, the Commissioner

---

26 *Commissioner of Police v Green*, above n 8, at [25].
27 *Commissioner of Police v Burgess*, above n 8, at [30].
28 At [33].

refers to the examinee's right to counsel at the examination, which is protected by s 107(7) of the Act.

The District Court's arguments

[53] The District Court filed a notice abiding the decision of the Court and did not appear at the hearing. However, the District Court also filed and served legal and factual submissions for the hearing. As regards the legal submissions, these were adopted by the Commissioner, and it is in that light that I will take them into account.

[54] The District Court referred to s 106 of the Act and the requirement that any application for an examination order be made in accordance with ss 99 and 100 of the Search and Surveillance Act 2012. Section 106(2) provides that every application must contain the grounds on which the application is made, a description of the information sought, and a description of the document/s production of which is sought. The District Court referred to s 107, where a Judge is empowered, if satisfied the Commissioner has reasonable grounds for applying for an examination order, to make such an order. The District Court submitted that an application to a Judge for an examination order under s 106 was not a proceeding in the District Court, that being something that is defined in r 1.4 of the District Courts Rules as meaning any application to the Court for the exercise of the civil jurisdiction of the Court, other than an interlocutory application. The District Court submitted an application for an examination order is not an application for the exercise of the civil jurisdiction of the Court.

[55] The District Court also referred to s 10(1) of the Act, which lists orders available under the Act in which proceedings relating to those orders are civil proceedings. Examination orders are not included in the list. Further, the Court of Appeal in *Commissioner of Police v Burgess* determined that s 10(1) is an exhaustive list of civil proceedings under the Act, and that applications for examination orders are not civil proceedings but are criminal proceedings.[29] The District Court drew an analogy with search warrants where this Court in *Hager v Attorney-General* had

[29] *Commissioner of Police v Burgess*, above n 8, at [22], [28] and [34].

described as "misconceived" Mr Hager's application for a copy of the District Court file in relation to the application for an issue of a search warrant and the Judge's reasons for issuing the warrant. The Court in *Hager* said:[30]

> Requests made to any person who is authorised as an issuing officer for the purpose of warrants under the Search and Surveillance Act 2012 are not treated as proceedings by the Registry of any Courts to which they might be delivered.

[56] The District Court also argued that Parliament did not intend an examinee to access the application. It pointed to the examinee having no right of access to the application for that order, and relied on *Commissioner of Police v Green*, where Williams J found that the location of the examination order process in the Act was intended that it should be treated similarly to search warrants.[31] Further, the fact the Select Committee changed the provisions relating to examination orders to introduce judicial oversight to what otherwise would have been a police notice procedure was a strong indication the legislature never intended access rights or procedures of the High Court Rules to be "bolted on the examination order process".[32] Williams J found instead that, as with search warrants, judicial oversight by means of an ex parte procedure was a sufficient safeguard for the examinee. Williams J's assessment of the legislation was approved by the Court of Appeal in *Commissioner of Police v Burgess*.[33]

[57] The District Court argued that as rules governing access to court documents in the District Courts Rules are virtually identical to those in the High Court Rules, there was no reason in principle why the reasoning that there is no right of access to an application for an examination order under the High Court Rules should not likewise apply to access under the District Courts Rules.

[58] The District Court also argued that the provisions of the Criminal Procedure Rules 2012 dealing with access to Court documents do not apply. It noted that in relation to those rules, "court file" is defined to mean a collection of documents in the custody or control of the court that relate to a criminal proceeding. Further, that

---

30 *Hager v Attorney-General* [2014] NZHC 3293 at [43]–[45].
31 *Commissioner of Police v Green*, above n 8, at [16].
32 At [16].
33 *Commissioner of Police v Burgess*, above n 8, at [32].

"criminal proceeding" is defined to mean a proceeding under the Criminal Procedure Act 2011. Section 14 of that Act provides a criminal proceeding is commenced by filing a charging document.

[59] The District Court submitted that examination orders are investigative powers, like search warrants and production orders. As such, they can be issued without criminal proceedings being underway as a preliminary matter by police prior to the filing of a charging document.

[60] The District Court then made factual submissions, which I find surprising. This is because if there had been an appearance from counsel these submissions would have amounted to evidence tendered from the bar. There was no affidavit evidence to substantiate them. In any judicial review proceeding before this Court, factual evidence that a party wants to tender to the Court should be tendered in a proper form, namely by affidavit. Evidence that is not produced in a proper form can only be produced by consent. No consent was given here. The wrongful tendering of evidence by the District Court was the subject of criticism by Ms Li, and she was right to do so.

[61] By way of submission the District Court attempted to describe the material it holds in relation to the examination order. It also described the information it did not hold. It then went on to argue that the nature of the material it held was not subject to the District Courts Rules relating to search of court records.

[62] In conclusion, the District Court referred to statements by Williams in *Commissioner of Police v Green* that the legislative history of ss 106 and 107 gives a strong indication the legislature did not intend access rights or procedures under the High Court Rules or the District Courts Rules to apply to the examination order process. It then submitted that judicial oversight of the application process provides a sufficient safeguard to the examinee. The issuing of the order on the application of the Commissioner should speak for itself that the Judge was satisfied that grounds for issuing the order existed.

[63] Generally when the District Court is being judicially reviewed it takes no active role in opposing the proceeding.[34] Hence in the present case the filing of a notice that it will abide the Court's decision. For a judicial body under review to file legal submissions relevant to its jurisdiction is unobjectionable. However, here with the factual submissions the District Court overstepped the settled line that it should not enter the fray. Further, it did so in a way that offended against the Evidence Act 2006. In *Donovan v Graham* McGechan J found passages of an affidavit sworn by a Queen's Counsel to be inadmissible. The Judge commented:[35]

> I would remark that an affidavit by one of Her Majesty's counsel should be punctilious.

I consider the same applies when it comes to evidence from the District Court. If the District Court considers it appropriate to place factual information before the Court it should do so in the proper form, which in this case was by affidavit.

Discussion

[64] The Court of Appeal's decision in *Gill v Attorney-General* confirms that in general the issuing of a search warrant is not amenable to judicial review.[36] Instead a party seeking to complain about the issuing of a search warrant and its subsequent execution should look to the specific remedies in the criminal law: it will only be in exceptional cases that the Court will in judicial review intervene in matters that "involve the exercise of a prosecutorial discretion or investigative powers".[37] Similar reluctance to invoke the judicial review jurisdiction where preliminary decisions or information gathering is involved was expressed in *Singh v Chief Executive of the Ministry of Business, Innovation and Employment.*[38]

---

34 See *New Zealand Engineering, Coachbuilding, Aircraft, Motor and Related Trades Industrial Union of Workers v Court of Arbitration* [1976] 2 NZLR 283 (CA) at 284–285.

35 *Donovan v Graham* (1991) 4 PRNZ 311 (HC) 311 at 314.

36 *Gill v Attorney-General*, above n 23, at [19].

37 At [19] citing *Fox v Attorney-General* [2002] 3 NZLR 62 (CA) at 69–72; and *Polynesian Spa Ltd v Osborne* [2005] NZAR 408 (HC) at [61]–[69]. See also *Gill v Attorney-General* above n 23, at [17] where the Court of Appeal referred to the procedural limitations of judicial review in terms of the restrictions on fact finding ability as a further reason for why it was unsuited to review a criminal investigation.

38 *Singh v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 220, [2014] 3 NZLR 23.

[65] In *Singh* the Court of Appeal provided helpful guidelines for when a decision may have reached the stage when judicial review may occur. The Court said:[39]

> … the following considerations will be relevant:
>
> (a) The nature of the statutory power being exercised.
>
> (b) The stage that has been reached in the relevant statutory process.
>
> (c) The extent to which the statutory power exercised is likely to be influential in the ultimate decision.
>
> (d) Whether there are any further opportunities in the statutory process to correct any apparent error including the availability of a right to appeal or seek judicial review of a decision ultimately reached at the conclusion of the statutory process.

Further, the Court of Appeal stated:[40]

> Where matters have reached only a preliminary stage and the powers exercised to that point are unlikely to be influential in the final decision, the Court will not usually intervene by way of judicial review. There are sound policy reasons why that should be so. Where an investigation is merely at the information gathering stage, and the party under investigation has adequate opportunity to address issues raised for his or her response, it is most unlikely that the subject's rights will be adversely affected. Moreover, where there are adequate opportunities for appeal or review of any decision ultimately reached, it is not in the public interest that those responsible for conducting preliminary investigations should be put to the time and trouble of responding to applications for review.

[66] As the first respondent pointed out, in *Commissioner of Police v Burgess* the Court of Appeal approved of the characterisation of examination orders as something akin to a search warrant where judicial oversight by means of an ex parte procedure was the chosen safeguard.[41] Further, in *Commissioner of Police v Burgess* the Court of Appeal accepted the Commissioner's argument that examination orders are more akin to an authorisation than a decision, and in particular that a judgment with reasons will not normally be given.[42]

---

39 At [38].
40 At [39].
41 *Commissioner of Police v Burgess*, above n 8, at [23] where the Court of Appeal approved the comments of Williams J in *Commissioner of Police v Green*, above n 8, at [16].
42 At [30] and [32].

[67] I consider, therefore, that the similarity between examination orders on the one hand and search warrants, investigative powers and prosecutorial discretion on the other hand warrants the Court taking same approach when it comes to their amenability to judicial review. Further, in terms of the guidelines given in *Singh* it is clear that in general an examination order is too premature in the decision-making process for it to be amenable to judicial review. I consider, therefore, that unless there is something exceptional about the circumstances regarding the making of an examination order a Court should hold back from judicial review of the order.[43]

[68] There is nothing about the present case that would place it in the exceptional category. As with the issue of all examination orders it has been done under the oversight of, in this case, a District Court Judge. This is the safeguard that Parliament has provided for persons in Ms Li's circumstances.[44] There is no evidence to suggest the examination order was issued in bad faith, for an improper purpose or as a result of malice, each of which would make the issuing of the order exceptional and something that warranted the attention of this Court on judicial review.

[69] I realise that Ms Li's complaint also includes a complaint that she could not get access to the District Court file in order for her to learn to why the order was issued. Nor were reasons for issuing the order given by the District Court Judge. Thus she would maintain that absent access to the Court file or reasons for the order she is precluded from obtaining evidence that might have allowed her to argue that this order fitted within the exceptional category. However, *Commissioner of Police v Burgess* makes it clear that no reasons for an examination order are required.[45] *Commissioner of Police v Burgess* also makes it plain that Parliament did not intend persons subject to examination orders to have access to the Court file. In this regard the Court of Appeal agreed with Williams J in *Commissioner of Police v Green*[46] that the requirement a Judge issue an examination order , which could be done without notice, was an indication that Parliament did not intend the notice and access rights

---

43 A similar view was taken by Williams J in *Commissioner of Police v Green*, above n 8, at [25].
44 *Commissioner of Police v Green*, above n 8, at [16].
45 See [30] and [32].
46 See *Commissioner of Police v Burgess*, above n 8, at [23]; and *Commissioner of Police v Green*, above n 8, at [16].

or procedures of the High Court Rules (relating to civil proceedings) to be bolted onto the examination order process.

[70] *Commissioner of Police v Burgess* also makes it clear that an examination order is under the criminal jurisdiction of the Court. Accordingly, Ms Li's entitlement to search the District Court's records would need to be considered in terms of the Criminal Procedure Rules 2012. As regards Ms Li having access to the District Court file given the stage the investigation process was at, there would in any event have been good reason under Part 6 of those Rules for access to be denied.

[71] Ms Lai has argued in reliance on *Mafart v Television New Zealand Ltd*[47] that the access she sought to the Court files relating to the making of the examination order is civil in nature, and so the District Court erred in law by applying criminal regulations. In my view that argument mis-applies the rationale of *Mafart v Television New Zealand Ltd*. In that case the Supreme Court considered whether an application under the Criminal Proceedings (Search of Court Records) Rules 1974 was a civil proceeding or a criminal proceeding. How the application was characterised determined whether there was a right of appeal from a decision of the first instance Court. The only right of appeal was to be found in s 66 of the Judicature Act and this only applied to civil proceedings. The Supreme Court found that an application to access Court records under the Criminal Proceedings (Search of Court Records) Rules 1974 was not a criminal proceeding and therefore came within the meaning of s 66 of the Judicature Act. Hence, there was a right of appeal. The Supreme Court's characterisation of an application for access to Court records as civil had no impact on which rules should be applied to determine that application. Indeed the Supreme Court was well aware that access in the *Mafart* case would be under the Criminal Proceedings (Search of Court Records) Rules 1974.[48] Here the District Court correctly applied the relevant criminal search rules to Ms Lai's request for access to the Court files.[49]

---

47 *Mafart v Television New Zealand Ltd*, above n 15.

48 The Supreme Court recognised that there was no common law right of access to Court records and that any such access was either via the criminal search rules, or the High Court Rules.

49 Rule 6.3 of the Criminal Procedure Rules 2012 state that a decision made by a Judge under Part 6 of these rules (which relate to access to Court documents) is made in exercise of the Court's civil jurisdiction. This is consistent with the Supreme Court's approach in *Mafart*.

[72] Further, it can be said that if someone in Ms Li's position has no evidence of bad conduct or improper purpose on the part of the Commissioner, and instead has to go "fishing" for it through seeking access to Court records then she is in no position to argue that the order should be treated as exceptional, and so open to judicial review. Such allegations should only be made when the party making them has good cause to do so, which usually means evidence in his or her possession to establish the allegations.

[73] The thrust of Ms Li's argument has also been that there is a dearth of evidence to support her being someone who has received property from Mr Tan, which in turn supports the inference that the order was not obtained in good faith. However, this argument cannot stand. The evidential threshold that the Commissioner has to meet to obtain an examination order is low. Here, there was sufficient evidence to connect Ms Li, through her daughter Ms Zheng to Mr Tran. In this regard I consider that the evidence went beyond the "assumption by Mr Russell that Ms Zheng was Mr Tran's girlfriend." In addition to that belief there was evidence that supports the inference that Mr Tran has placed property in Ms Zheng's name.[50] Given this conduct, when it is added to the relationship between Ms Zheng and Ms Li I consider that there is enough circumstantial evidence to warrant the Commissioner seeking to make enquires of Ms Li by way of an examination order.

[74] In *Yan v Commissioner of Police*, Ellis J addressed an application for interim orders to prevent the Commissioner from conducting an examination pursuant to an order made by the District Court under s 107 of the Act. As in this case, the application was for interim orders under s 8 of the Judicature Amendment Act 1972, pending a substantial judicial review hearing.[51]

[75] Ellis J found that the applicants were seeking to stop, through interim orders, their examination by the Commissioner pursuant to the order of the District Court. Although the authorisation was made by the Court, Ellis J found that the application

---

50 See discussion herein at [8] to [10] and [13] and [15].

51 *Yan v Commissioner of Police*, above n 7. The Court of Appeal has held that applications for examination orders are criminal proceedings and there is therefore no jurisdiction under s 66 of the Judicature Act for the Court to hear an appeal of a decision to grant or refuse orders: see *Commissioner of Police v Burgess*, above n 8, at [34].

in reality addressed the exercise of the Commissioner's powers under the Act, and therefore fell within s 93 of the Act. The effect of s 93 of the Act was to render any interim order to prevent the Commissioner from examining the applicants futile.[52] Consequently, her Honour declined to grant interim relief, relying on the decision in *Hawkins v Sturt*, which stated that the Court would be unwilling to grant injunctive relief which would have no cause of effect.[53]

[76] During the hearing before me the Commissioner pressed me to follow the approach in *Yan.* With the greatest respect to Ellis J, I am not persuaded that the approach taken in *Yan* was correct. First, I consider that s 93 of the Act is not engaged as the decision to make an examination order is made by a Judge. Whilst the springboard for the making of the order is the Commissioner's decision to seek one that cannot turn the order itself into something that can be attributed to the Commissioner. I acknowledge that he exercises a statutory power when he decides to apply for an order, and therefore s 93(4) would apply to any attempt to judicially review his decision. But with examination orders it is the decision to make the order that is of interest when there is a challenge by way of judicial review. The decision to apply for such an order is preliminary and for that reason alone it is outside the scope of judicial review.[54]

[77] It would seem that the wording of s 93 was directed at the earlier proposed form of the legislation where there was to be no provision for judicial oversight and examinations were to be by way of notice issued by the Commissioner. This would have followed the form of s 21 of the Serious Fraud Office Act. However, Parliament set its face against that form when it came to s 107 of the Act. The legislative history of s 93 of the Act shows that the current procedure for applying to a judge for an order for examination was added at the Select Committee stage of the Bill. The Select Committee said that "[w]e consider that replacing the notice power with the power to seek an examination order with judicial oversight would provide

---

52 At [24].

53 *Hawkins v Sturt*, above n 18, at 66,610 as cited in *Yan v Commissioner of Police*, above n 7, at [32]. *Hawkins v Sturt* concerned ss 21 and 22 of the Serious Fraud Act 1990, which are very similar to ss 93 and 94 of the Act.

54 See discussion in *Marlborough Aquaculture Ltd v Chief Executive, Ministry of Fisheries* [2003] NZAR 362 (HC) at [23].

better safeguards".[55] It may be that by oversight Parliament failed to amend the draft provision relating to s 93 to ensure that it expressly covered the circumstance when a Judge made an examination order under s 107. Alternatively, the failure to expressly include in s 93 a reference to a Judge exercising power under s 107 can be seen to demonstrate an intent on the part of Parliament to exclude the decisions of Judges under s 107 from the scope of s 93. In this regard, it can be said that once Parliament decided to change from a notice given by the Commissioner to a statutory discretion vested in a Judge to decide whether to make an examination order or not, Parliament was content to let the general law apply to the exercise of that discretion. For the reasons given below I prefer the latter view. Further, in the present case Ms Li has not sought to review the Commissioner's decision to obtain an examination order.

[78] Section 93 can be seen to operate as a privative clause that would limit the ability of a Court on judicial review to issue interim relief in circumstances that fall within s 93. In principle, such clauses are to be interpreted narrowly as they operate to preclude access to the Courts, which is a fundamental common law right.[56]

[79] Recently in *Attorney-General v Spencer*[57] the Court of Appeal referred to the common law principle of legality which recognises that fundamental rights cannot be overruled by general or ambiguous words:[58]

> Section 6 of the Bill of Rights Act directs that wherever a statutory enactment can be given a meaning consistent with the rights and freedoms contained in the [New Zealand Bill of Rights] Act that meaning is to be preferred to any other. That section reflects a common law principle of legality that operates in a wider context, is constitutional in nature, existed long before enactment of the Act and does not depend on the existence of ambiguity in a statutory provision. In a passage cited by Elias CJ and Tipping J in *R v Pora*, Lord Hoffman referred in *R v Secretary of State for the Home Department, ex parte Simms* to the importance of the principle of legality in a constitution which acknowledges the sovereignty of Parliament. He acknowledged that Parliament could, if it chose to do so, legislate contrary to fundamental human rights. However:

---

55 (17 February 2009) 652 NZPD 1372.

56 See discussion in R Carter *Burrows and Carter on Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 339.

57 *Attorney-General v Spencer* [2015] NZCA 143.

58 At [74] (citations omitted).

> …the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. … In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.

[80] This led the Court of Appeal in *Spencer* to conclude that:[59]

> Clear words are necessary before the court will read legislation as intending to remove rights protected by the Act.

[81] Regarding s 93, the words of this provision are not clear when it comes to whether the provision should apply to the decision of a Judge to make an examination order under s 107. For this reason alone I am not prepared to find that s 93(4) would preclude the Court from granting interim relief in the case of an examination order that was exceptional, and which met the tests I have set out above for when a Court will judicially review such orders.[60]

[82] Secondly, an examination order that qualified for judicial review would be so exceptional that if the grounds for review were established I think that would be because the order was a nullity. For example an examination order made in bad faith, for improper purpose or for a malicious purpose would be said in terms of administrative law not to amount to an examination order at all. So even if I am wrong on the first head, and the examination order could be linked to the Commissioner in such a way that ordinarily it would fall within s 93, that would not be the case if the examination order was one that was amenable to judicial review. At the time of interim relief if a court was confronted with evidence that satisfied it that an examination order was tainted with bad faith, improper purpose or malice and that interim relief was warranted a court might well conclude that what it was confronted with was a nullity and, therefore, something that was outside the scope of s 93. Starting with *Anisminic Ltd v Foreign Compensation Commission*[61] and in this

---

59 At [75].

60 I consider that the omission to expressly apply s 93 to a Judge acting under s 107 demonstrates that Parliament did not intend s 93 to apply to this circumstance: see [76] herein.

61 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL).

country *Bulk Gas Users Group v Attorney-General*[62] there is a line of authority that holds that a privative clause will be ineffective if a decision-maker:[63]

> … whose jurisdiction was limited by statute or subordinate legislation mistook the law applicable to the facts as [he] had found them to be [he] must have asked [himself] the wrong question, ie one into which [he] was not "empowered to inquire and so had no jurisdiction to determine. [His] purported "determination", not being a "determination" within the meaning of the empowering legislation, [is] accordingly a nullity.

[83] Neither the Commissioner nor a Judge acting under the Act has the power to act in bad faith, for improper purpose or maliciously. If they do, they have exceeded their jurisdiction and so any resulting decision they might have made would be a nullity and, therefore, something that was not a decision in terms of s 93(4). In this way the privative effect of s 93 would be ineffective. So for this reason also I consider that s 93 does not have the blanket protective effect for which the Commissioner argues. In my view if the exceptional case should arise, then this Court would have the jurisdiction to grant interim relief under s 8 of the Judicature Amendment Act once it was satisfied that the usual tests for granting interim relief were satisfied.

Duffy J

---

62 *Bulk Gas Users Group v Attorney-General* [1983] NZLR 129 (CA).

63 *O'Reilly v Mackman* [1982] 3 All ER 1124 (HL) at 1129, per Lord Diplock as cited in *Bulk Gas Uders Group v Attorney-General*, above n 62, at 134.