Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 79/99/41C

NOTE: NAME OF APPLICANT NOT FOR PUBLICATION

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against E medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Tuesday 15 June 1999

PRESENT: Mrs W N Brandon - Chair

Dr I D S Civil, Ms S Cole, Dr J W Gleisner, Dr J M McKenzie (members)

APPEARANCES: Ms J Elliott for Complaints Assessment Committee

Mr B Squire QC and Ms G Phipps for respondent

Ms G J Fraser - Secretary (for first part of call only)

1. REASONS FOR DECISION OF THE TRIBUNAL MADE ON 15 JUNE 1999

1.1 **THIS** Decision giving reasons for the Tribunal's Decision No. 78/99/41C made on 15 June 1999 is to be read in conjunction thereof.

2. THE APPLICATIONS:

2.1 **A** Complaints Assessment Committee ("the CAC") established under Section 88 of the Medical Practitioners Act 1995 ("the Act") has determined in accordance with Section 92(1) of the Act that complaints by xx against Dr E should be considered by the Medical Practitioners Disciplinary Tribunal. The CAC has reason to believe that grounds exist entitling the Tribunal to exercise its powers under Section 109 of the Act.

2.2 **BY** applications dated 3 May 1999 the respondent applicant sought the following orders:

(1) Prohibiting the publication of the medical practitioners name and/or any particulars likely to lead to his identification as a person subject to disciplinary proceedings before the Tribunal;

(2) For such consequential directions that may be necessary.

(3) Orders for the production of medical and other records by the CAC or the complainants.

2.3 **THE** CAC made an application seeking the production of videotapes recording some of the matters at issue in this proceeding, by the respondent or any other person who may have such material in their custody, possession or control.

2.4 **THE** hearing of the applications by the Tribunal was by telephone conference commencing at 8.00 am on Tuesday 15 June 1999. In advance of the hearing submissions in support of the applications for name suppression and for production of medical records and other information

were filed by Mr Squire QC and Ms Phipps, counsel for the applicant, together with a number of affidavits in support of the application. By memorandum, counsel for the CAC opposed the applications.

3. DECISION ON THE APPLICATION FOR NAME SUPPRESSION:

3.1 **THIS** application was made upon the grounds that having regard to the interests of the applicant, the interests of persons who will be adversely affected by the publication of his name or the disclosure of his identity, and the public interest in matters referred to in the affidavits signed in support of the application, it is just, equitable and proper that there be suppression orders on the terms sought in the application.

3.2 **COUNSEL** for the respondent filed comprehensive submissions in support of the application, and some further submissions were filed by the applicant in response to correspondence from the Tribunal requiring that certain preliminary matters raised therein be addressed.

3.3 **IN** his submissions, Mr Squire QC referred the Tribunal to the fact that, in July xx, a Committee of Inquiry Into Complaints About xx And Other Related Matters established by the Director of Mental Health Development of the xx Area Health Board commenced inquiry into complaints made by patients of the xx Unit concerning treatment and care they had received. Two of the patients involved in that Inquiry are the complainants in the present proceedings before the Tribunal. Thus, to a large degree, the matters which are the subject of the present complaint have previously been the subject of a formal inquiry.

3.4 **IT** should also be recorded that the Tribunal was advised that certain allegations which are now the subject of this present complaint were to be considered in the context of the xx Inquiry, but were withdrawn at the commencement of the hearing of the Committee of Inquiry.

3.5 **IN** his submissions in support of the application, Mr Squire QC made the point that proceedings before the Tribunal are not criminal or punitive in character; their basic purpose is protective - of the public and the profession. Mr Squire also acknowledged that

"although it is right that the starting point must always be recognition of the importance of open judicial proceedings, underlined in this context by Section 106(1) Medical Practitioners Act 1995, ..." [nevertheless] *"that principle must never be elevated to the point where the threshold requirements for the granting of name suppression are insurmountably high beyond what is implicitly contemplated by the Act which confers the power to grant it. In the case of Section 106(1) the opening words of qualification to the provision point to the exercise being one governed by Section 106(2) where the test is one of satisfaction of desirability; and the considerations bearing on the issue of open judicial/disciplinary proceedings are encompassed in the requirement to have regard to the public interest as one, but not necessarily an overriding factor, in determining whether that test is met in any given instance."*

3.6 **THAT** submission highlights the requirement that when considering applications for interim suppression of a respondent medical practitioner's name the Tribunal is required to exercise its discretion by balancing the practitioner's interests, together with those of the complainant, the CAC and the public interest.

3.7 **THE** Tribunal has consistently taken the approach that while technically the interests of a respondent medical practitioner in non-disclosure are a matter to which the Tribunal can have regard under Section 106, if that were to be a determining factor then no proceedings could be held in public as there is unlikely ever to be an instance where the respondent's interests in terms

of his or her reputation, family or commercial interests, will not be in issue simply by virtue of the fact that he or she has been charged with a disciplinary offence.

3.8 **AGAINST** that, Mr Squire's submission that *"the test"* contained in Section 106(2) *"was one of satisfaction of desirability"* is correct, and encapsulates the nature of inquiry which the Tribunal must undertake on every occasion it is presented with an application for suppression of a respondent medical practitioner's name.

3.9 **IN** support of this application, a number of affidavits have been submitted. Amongst other matters the affidavits depose to the extent to which the recovery of the respondent's patients, past and present, would be compromised by the publication of his name and the consequences which might flow from that.

3.10 **GIVEN** the nature of the respondent's practice and the particular vulnerability of his patients, both past and present, that is a factor to be considered in two respects; first, in considering the impact which the publication of his name may have on the respondent's practice and/or position generally, and, secondly, in relation to the public interest in maintaining public confidence in the personnel and institutions available in the area of xx, which area of health care is already compromised to a degree by events and issues unrelated to the matters which are the subject of this complaint.

3.11 **AS** always in applications of this type, the issue of public safety is a paramount consideration for the Tribunal. In this regard, the Tribunal is always mindful of the statement of the general purpose of the Act contained in Section 3; *"to protect the health and safety of members of the public*

by prescribing or providing for mechanisms to ensure that medical practitioners are competent to practice medicine".

3.12 **AS** a recent well publicised case has demonstrated, the suppression of a practitioner's name inevitably has the potential to cause alarm to that section of the public who might have been treated for the particular condition in the particular locality in which the complaint has arisen. Name suppression also inhibits the dissemination of information which might elicit reports of other, or similar, complaints from patients, or former patients, of the practitioner concerned.

3.13 **IN** the present case the affidavits filed in support of the application make reference to media publicity at the time of the xx Inquiry into the complaints made in xx and of advertising placed in newspapers and magazines apparently by the complainants, inviting other patients to come forward, apparently without result.

3.14 **IN** this latter regard we note that the examples of advertising located by the respondent's legal advisers annexed to the affidavit of Ms xx, are somewhat ambiguous and do not explicitly advertise for former patients who might have complaints about their treatment at xx to come forward.

3.15 **HOWEVER**, the Tribunal is satisfied that the events at issue in this complaint have, over the past several years, been the subject of publicity of one form or another and the suppression of the respondent's name is not likely to compromise public safety or otherwise unduly prejudice legitimate public interest in the hearing of these complaints.

3.16 **IN** any event, pursuant to Section 106 of the Act, the hearing of the complaint will proceed in public, with appropriate opportunity for publicising the events at issue in this complaint. The Tribunal also received by way of affidavit, evidence from an xx as to the impact on the respondent of the pursuit of these complaints over the past nine years. The Tribunal is satisfied that the potential for harm to be caused to this doctor, and his family and patients and former patients, as a result of publicity about the fact that he is facing disciplinary charges is greater than would normally be the case. On balance, and taking into account all of the factors the Tribunal must consider it is desirable that the respondent's name be suppressed pending further order of the Tribunal.

3.17 **GIVEN** the highly personal nature of the information provided in the affidavits, Counsel for the respondent seeks an Order that publication of the affidavits be restricted to Counsel for the purposes only of preparing submissions in response to these applications, and that the affidavits are not to be made available to either of the complainants.

3.18 **THAT** request was not opposed by Counsel for the CAC, and the Tribunal makes those Orders, and also extends the prohibition on publication of the affidavits to any other person, apart from Counsel involved in this proceeding.

4. APPLICATION FOR ORDERS FOR PRODUCTION OF MEDICAL AND OTHER RECORDS:

4.1 **COUNSEL** for the respondent medical practitioner also made application seeking patient records and notes concerning or relating to the complainants' treatment, counselling or therapy for the

period of 12 years prior to the complainants' admission to xx, and for the further period of discharge from xx up until the present time.

4.2 **THE** application was supported by a further affidavit from Ms xx stating that the information was necessary for the respondent's solicitors to prepare his defence in the absence of further particulars of the charge.

4.3 **WITH** respect to the latter, the respondent's legal advisers are now in possession of the statements of evidence from witnesses to be called on behalf of the CAC. To the extent that the respondent is entitled to be fairly informed as to the nature of the complaints and the evidence that is to be given by the CAC and presented to the Tribunal at the hearing, and that evidence is provided in the witness statements, the Tribunal considers (without determining the issue) that the request for further particulars has been overtaken by receipt of the CAC's witness statements. Mr Squire QC however was not prepared to concede whether or not that is the case, and asked that the Tribunal record that the issue of particulars is still a *"live one"* so far as the respondent's advisers are concerned.

4.4 **THE** application for production of records and information relating to the period prior to the complainants' admission to xx and for records relating to the complainants' medical history in the period up to the present date, was opposed by the CAC, broadly on grounds that the information sought is privileged, or contains highly personal information such that the Tribunal should exercise its discretion not to order production.

4.5 **HOWEVER**, before considering the question of privilege especially, it seems to the Tribunal that the threshold test is whether or not the records and information sought are relevant in terms of the charge laid against the respondent. If the Tribunal determines that the material is not relevant, then it is pointless to consider whether or not it is privileged, or if the Tribunal ought to order production on some other ground.

4.6 **THE** Tribunal considered the application in two parts. First, in relation to the information concerning or relating to the complainants' treatment, counselling or therapy for the period of 12 years prior to their admission to xx. It is apparently the case that the relevant files would have been available to the respondent at the time the patients were attending xx, and is contained in records made at the time they entered into the respondent's care.

4.7 **THUS**, to the extent that information might be privileged, privilege would have been waived by the complainants by virtue of the fact that it is information which the respondent needed to diagnose and treat the complainants and which would, necessarily, have been given to the respondent, either by the complainants or their medical advisers or counsellors who referred them to the respondent.

4.8 **AS** part of his normal clinical practice therefore, the respondent had access to the complainants' relevant prior medical records, and possibly also had them available to him throughout the time the complainants were patients at xx.

4.9 **AT** the time of their admission to xx, some assessment of those records and their prior history was made both by the admitting physician, and by the respondent as a practitioner responsible for the

complainants' care and treatment while they were patients at xx. The records will inevitably have been referred to in consultations and discussions with and about the complainants at that time, but apparently no specific notes were made by the respondent about the complainants' previous history or records in his own records made at that time.

4.10 **ACCORDINGLY**, in the absence of those records the respondent must rely on his memory of what was said and what was contained in those records. He also will have no way of checking the accuracy of his memory about what was contained in those early records.

4.11 **FOR** the applicant, Mr Squire contends that the records, both the earlier records and the medical records since the time the complainants were treated by the respondent, are necessary to enable the Tribunal to assess the credibility of the complaints and he referred to Particulars 1.1, 1.2 and 1.6 of the charge:

1.1 Failed to institute specific treatment for her psychiatric condition of post traumatic stress disorder.

1.2 Failed to use due care and skill with transference interpretations as a result of which the patient was undermined.

1.6 Being aware of her past medical and psychiatric history and her condition on admission placed her in situations which were likely to worsen or aggravate her condition being in particular

(i) the psychodramas known as "Amazon Women" and "Hansel and Gretel" in which sticks were used by participants; and

(ii) the group activity in which she was blindfolded and other patients were encouraged and permitted to touch her body wherever they chose.

4.12 **THE** Tribunal accepts Mr Squire's submission that it would compromise the preparation of the respondent's defence if he was denied access to information which he had available to him at the time he made the decisions which are now effectively the subject of the charges laid against him.

4.13 **HOWEVER**, the Tribunal does not agree that any other records or information about the complainants that was not made available or disclosed by the complainants at the time of their admissions to xx is relevant to subsequent complaints about their treatment by the respondent. The Tribunal fails to see how material that was not relied upon by the respondent when he was assessing the complainants and deciding what treatment was appropriate for them, can now be relied upon by way of *ex post facto* justification for the decisions he made.

4.14 **ANOTHER** factor against granting the application is that it is cast in the broadest possible terms. The Tribunal accepts the submission made by Counsel for the CAC that such an application is a *"fishing expedition"* seeking any information which is potentially prejudicial to the complainants. As has been stated in a number of decisions, the general philosophy behind the rules of discovery is that they are aimed at getting to the truth, not for providing tools for ambush; *BNZ v Gardiner* (1990) 2 PRNZ 278.

4.15 **VIEWED** in this light, and taking into account the reported statement by Ms Phipps, Counsel for the respondent, in relation to the medical records and counselling notes made since the complainants left xx that, *"it is not possible to advise with detail what assistance it is anticipated will be gained from those files"*, the only possible inference is that all of the material beyond what was compiled or available when the complainants were treated at xx, is now being sought to provide a basis for an attack on the complainants, at the very least on their credibility, rather than for the purposes of enabling the respondent to meet head on the allegations made against him.

4.16 **AS** such, all that material which was not compiled in the course of the complainants' treatment at xx, and was not otherwise relied upon by the respondent when he made his clinical decisions about the complainants' treatment, is extraneous to the charges he is now required to defend.

4.17 **ACCORDINGLY**, the Tribunal puts to one side the question as to whether, as a matter of law, it could order the production of all of the records sought by the respondent's advisers and declines to order production of any records or information not previously disclosed to the respondent on the basis that such records and information are not relevant to this proceeding.

4.18 **IN** deciding to order limited production of the complainants' medical records and the other information described in the first part of the application the Tribunal accepts that the complainants might take the position that any waiver of privilege on their part in respect of that material made available to the respondent at the time of their admission to xx was made for the purposes of their obtaining care and treatment from the respondent, and not for any other purpose.

4.19 **THE** possibility that this material might become relevant in a different context at some future point in time was unlikely to have been in the contemplation of the complainants when they made available their medical records and all of the other information which would have been sought at the time of their admission.

4.20 **HOWEVER**, the practical reality is that this material was made available for the purposes of obtaining care and treatment which is now the subject of complaints. When assessing whether or not the respondent is guilty of the charge as it is particularised the Tribunal must make an assessment as to the correctness or otherwise of decisions made by the respondent on the basis

of the information he had available to him at the time. It would be artificial in the extreme if that inquiry of fact was to proceed without the respondent, his advisers or witnesses having that information available to them for evaluation and comment. The records clearly are relevant and ought to be produced, to the extent that the records are within the power or possession of the complainants. However, production is to be confined to information which was made available to the respondent at the time of the complainants' admission into his care, that is, only information which was available to the respondent and upon which he relied in making the decisions regarding the care and treatment of the complainants which are now the subject of complaint is to be provided.

4.21 **DIFFERENT** considerations clearly apply in respect of the records *"for the further period since discharge from xx up until the present time"*. The Tribunal declines to order production of those records for the following reasons:

1) Clause 7 of the First Schedule to the Act provides:

> *"**Powers of investigation** - (1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by it in writing to do so may -*
>
> *(a) Inspect and examine any papers, documents, records, or things:*
>
> *(b) Require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:*
>
> *(c) Require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records.*
>
> *(2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this clause shall be verified by statutory declaration or otherwise as the Tribunal may require."*

2) But Clause 7 must be read subject to Clause 11(1) of the First Schedule which provides that:

*"**Privileges and immunities** - (1) Every person shall have the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records and things to the Tribunal as witnesses have in courts of law."*

3) One such privilege is medical privilege, created by Section 32 of the Evidence Amendment Act (No. 2) 1980 which provides:

*"**Disclosure in civil proceeding of communication to medical practitioner or clinical psychologist** -*

(1) Subject to subsection (2) of this section, no registered medical practitioner and no clinical psychologist shall disclose in any civil proceeding any protected communication, except with the consent of the patient or; if he is dead, the consent of his personal representative.

(2) This section shall not apply -

(a) In respect of any proceeding in which the sanity or testamentary capacity or other legal capacity of the patient is the matter in dispute:
(b) To the disclosure of any communication made to a registered medical practitioner [or a clinical psychologist] in or about the effecting by any person of an insurance on the life of himself or any other person:
(c) To any communication made for any criminal purpose.

(3) In this section -

["Clinical psychologist" means a psychologist registered under the Psychologists Act 1981 who is engaged in the diagnosis and treatment of persons suffering from mental and emotional problems; and includes any person acting in a professional character on behalf of the clinical psychologist in the course of the treatment of any patient by that psychologist:

"Protected communication" means a communication to a registered medical practitioner or a clinical psychologist by a patient who believes that the communication is necessary to enable the registered medical practitioner or clinical psychologist to examine, treat, or act for the patient:]

"Registered medical practitioner" includes any person acting in his professional character on behalf of the registered medical practitioner in the course of the treatment of any patient by that practitioner."

4.22 **NONE** of the exceptions contained in Section 32(2) apply, but the Tribunal cannot order any registered medical practitioner or clinical psychologist to disclose information they have regarding their care or treatment of either of the complainants in the absence of the complainants' consent. As counsel for the CAC pointed out, the privilege in this information exists for the benefit of the complainants and in this case is not waived.

4.23 **FOR** the reasons already set out, it is the Tribunal's view that privilege has been waived in respect of the records and information provided to the respondent when they were admitted to xx, and that waiver necessarily extends this proceeding, involving as it does complaints about the care and treatment given by the respondent, for which purpose the waiver the privilege was made.

4.24 **BUT** no such waiver of privilege is, or has been, made in respect of any other records or information which exists and/or which may be in the power or possession of the complainants.

4.25 **IT** is the Tribunal's view that the information outside of that already provided (whether in the context of these proceedings or at the time of the complainants' admission to xx) is simply not relevant in the context of the disciplinary charges laid against the respondent as currently framed. The Tribunal does not accept that the current mental states of the complainants are relevant and the ambit of the application extending as it does almost to any medical treatment ever sought by the complainants, either prior to their admission to xx or the period since discharge is, in the Tribunal's view, unreasonably wide and unjustified.

4.26 **THE** Tribunal accepts the submission made by counsel for the CAC that the treatment the complainants had received from other medical practitioners is irrelevant to the appropriateness and

professionalism of the respondent's treatment of them. The charges brought against the respondent do not relate to the success or otherwise of his treatment of the complainants, but rather to his decisions about what was appropriate treatment for the complainants, and the way in which that treatment was carried out. As counsel for the CAC states: *"The success of other treatments is wholly irrelevant in this regard."*

4.27 **HAVING** taken the view that the records and information related to the further period since the complainants were discharged from xx are not relevant it is not necessary for the Tribunal to determine whether or not it has the power to order production of this material. For completeness, it records that if it had been required to determine the issue, the Tribunal would have been bound by the recent decision by the Court of Appeal in *M v L* [1999] 1 NZLR 641-768, which involved civil proceedings and which is now the leading authority on access to notes made by doctors and counsellors in their professional capacity. Central to the Court's reasoning in that case was High Court Rule 307, which confers a discretionary power to order production of a *non-privileged document* that has been listed by a party as relevant and within the power and possession of that party (medical records and information being non-privileged in the hands of the plaintiff/complainant).

4.28 **THIS** case involved the disclosure of counsellor's notes, which was resisted on the grounds of confidentiality. The Court of Appeal held that, even if not privileged, the notes might still be protected from disclosure because the benefit of preserving their confidentiality might outweigh their "forensic purpose" in a particular case. Section 35 of the Evidence Amendment Act (No 2) 1980, did not confer privilege on the documents, because that section only permits a Court to

excuse a witness from answering a question or producing a document, it does not apply to pre-trial discovery.

4.29 **NEVERTHELESS**, the Court concluded that the factors listed in Section 35 should guide the exercise of the Court's discretion under Rule 307 whether or not to order production. The Court of Appeal expressed the strong view that, in cases of doubt, the Court should inspect the documents before making its determination, and if it becomes clear that an application of Section 35 would protect the documents from disclosure at trial, then this is a compelling reason not to order pre-trial production.

4.30 **THUS** even though Section 32 of the Evidence Amendment Act (No 2) 1980 did not apply to the notes made by doctors and clinical psychologists, as discovery had not been made against them (but against the plaintiff patient on the basis that the material was in her power), its provisions were relevant by analogy to exercise of discretion under Rule 307. If Section 32 had applied, disclosure would not have been permissible without the patient's consent. The appellants (defendants) should not be in a better position when Rule 307 applied, (disclosure could be ordered against the patient plaintiff) than they were by virtue of the operation of Sections 32 or 35:

"... the notes can properly be regarded as referring to protected communications. Thus, if s32 is applied directly, the two doctors would be prevented from disclosing the notes without their patients' consent. As consent is obviously not forthcoming, the respondents cannot gain access to the notes via the doctors. They can hardly be in a better position via the appellants as patients. To allow that would circumvent the whole purpose of the s32 privilege.

The need for the patient's consent under s32 effectively means that the privilege belongs both to the doctor and the patient. The patient cannot be in a worse position simply because it is R 307 which applied, and s32 bears on the subject only by analogy .... A privilege of this kind exists primarily for the benefit of the patient. Thus production of the

doctor's notes should not be ordered and there is no point in remitting this aspect of the case to the High Court for further consideration."

4.31 **THE** discretionary power conferred by Rule 307 is generally designed to ensure that parties put *"as many cards on the table as possible"*: *Green v CIR [Discovery]* (1989) 3 PRNZ 622. It is analogous to the general powers conferred on the Tribunal under Clause 5 and Clause 7 of the First Schedule to the Act, and the High Court Rules, by virtue of Section 51, Judicature Act 1908, regulate the practice and procedure of the Court in all civil proceedings. Similar provisions and Rules also regulate the practice and procedure in the District Court.

4.32 **NOTWITHSTANDING** that the Tribunal may regulate its procedure *"as it sees fit"*, presumably taking into account the specialist nature of its jurisdiction and the perhaps more inquisitorial nature of its hearings, it is proper for it to act consistently with the rules which regulate the procedure in its appellant courts, and of course, it is bound by decisions of the courts which are superior to it.

4.33 **FINALLY**, and perhaps even more directly relevant, Clause 6 of the First Schedule to the Act requires that, subject to Clauses 6 (1) to (3), *"the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act"*. Thus, in exercising its discretion to receive evidence, the Tribunal is required to take into account ***all*** of the provisions of the Evidence Act, including, in this case, Sections 32 and 35.

5. APPLICATION FOR PRODUCTION OF VIDEOTAPES:

5.1 **APPLICATION** seeking the production of videotapes was made by the Complaints Assessment Committee. At the time the complainants were admitted to xx they apparently gave their consent

to the videotaping of certain psycho-dramas in which they participated as part of their treatment by the respondent.

5.2 **IF** any such videotapes were available, they would constitute a contemporaneous record of the complainants' treatment at xx, such treatment being at the heart of the matters raised by the charge.

5.3 **HOWEVER** Mr Squire QC advised that the respondent and his advisers have not been able to locate any such videotapes and that any videotapes made at the time were apparently made on tapes which were used and reused over and over again. The quality of any such tapes is likely to be poor. A further consideration is that inevitably, the videotapes would disclose the identity and conduct of third parties who are not involved in this proceeding.

5.4 **MR** Squire QC gave an undertaking to continue his inquiries regarding the existence or otherwise of videotapes which are relevant to this proceeding but believes that it is unlikely that any such videotapes still exist.

5.5 **UNLESS** or until any such videotapes are located there is little point in considering the issues raised in this application any further, and the application is adjourned with leave reserved to the CAC to renew its application in the event any videotapes of the nature sought are found.

6. CONCLUSION:

FOR the reasons set out herein, the Tribunal confirms its Decision No. 78/99/41C dated 15 June 1999, with the addition of the following:

(1) The Tribunal orders that the affidavits filed on behalf of the respondent in support of the applications made by him are not to be disclosed to any other persons except the complainants' legal advisers, and for the purposes of preparing the CAC's submissions in opposition to the applications only.

DATED Auckland this 8th day of July 1999.

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W N Brandon

DEPUTY CHAIR