



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2015: No. 307

IN THE MATTER OF ORDER 58(1) OF THE RULES OF THE SUPREME COURT  
OF BERMUDA 1985

IN THE MATTER OF THE SUPREME COURT (RECORDS) ACT 1955

BETWEEN:-

**BERMUDA PRESS (HOLDINGS) LTD**

**Appellant**

-v-

**REGISTRAR OF THE SUPREME COURT**

**Respondent**

### **JUDGMENT SUMMARY ISSUED BY THE SUPREME COURT OF BERMUDA**

This summary is provided to assist in understanding the Judgment of the Court. It does not form part of the Judgment. The Judgment itself is the only authoritative document. The full Judgment is available at [www.judiciary.gov.bm](http://www.judiciary.gov.bm)

1. On July 20, 2015, the Appellant media organization applied to the Registrar of the Supreme Court for copies of documents on the Court file which had been referred to in a hearing being covered by the Press on July 21-22, 2015. The relevant hearing took place in constitutional proceedings relating to the validity of Parliament's voiding of certain contracts relating to the development of the Hamilton waterfront area. Some of the evidence filed in those proceedings making allegations of serious misconduct on the part of senior Government figures had previously entered the

public domain. The allegations had also been the subject of debate in the House of Assembly.

2. The Registrar refused the application based on the well-established conventional view that the Supreme Court (Records) Act 1955 does not permit non-parties to access documents in pending cases. Bermuda Press Holding Ltd. appealed that refusal and placed further arguments before the Court in the course of the appeal which were not placed before the Registrar.
3. In judgment delivered on July 24, 2015, the Chief Justice agreed with the Appellant that the principle of open justice formed part of Bermuda's common law and was also guaranteed by section 6(9) of the Bermuda Constitution. Where documents are referred to in Court in the course of a public hearing in a case of genuine public interest but not fully read out, the media (and the public generally) should be entitled to receive copies of the documents in question.
4. The Court noted that this access principle would rarely if ever apply in ordinary civil or commercial cases where only private interests were in play.
5. This access right which the Court upheld is subject to any valid objections from the parties in the case concerned. This includes the need to protect any confidential information forming part of the documents in question. The practical function of affording such access to Court records is to enable the media and ultimately the public to have the fullest possible understanding of the information being considered by the Court for the purposes of its ultimate decision. The higher level principle involved is the idea that informed public scrutiny of judicial decision-making is the best safeguard for the integrity of the judicial system as a whole.
6. The Court also decided that, properly read, the Supreme Court (Records) Act 1955 did not exclude public access to documents filed in pending cases altogether. It merely created a starting assumption that such files could not be accessed by the public which assumption could be rebutted by proof that access was justified in particular cases. Greater clarity of the legal position could best be achieved through updating the Court's Rules.