# Supreme Court provides clarity on the legal effect of a pseudonym order

**Case note: PQR v Secretary, Department of Justice and Regulation (No 1) [2017] VSC 513 (26 September 2017)**

## Summary

The Supreme Court has found that a pseudonym order issued under the court’s inherent jurisdiction has the effect of wholly protecting the anonymity of a party to a proceeding.

Therefore, the court refused an application for a proceeding suppression order under s. 18(1)(a) of the *Open Courts Act 2013* (Vic)(OC Act).

## Background

PQR was the applicant for a Working with Children Check (WWCC). His application was refused by the Secretary to the Department of Justice and Regulation (the Secretary). PQR applied for review of that decision at the Victorian Civil and Administrative Tribunal (VCAT). VCAT made a pseudonym and suppression order under the OC Act that prohibited publication of any information that might identify PQR.

VCAT refused PQR’s application for review. PQR subsequently sought leave to appeal on a question of law in the Supreme Court of Victoria (for that decision, see [PQR v Secretary, Department of Justice and Regulation (No 2) [2017] VSC 5144 (26 September 2017)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2017/514.html)).

Before filing his application for leave to appeal, PQR sought a pre-commencement pseudonym order under the Supreme Court’s inherent jurisdiction. Justice Ginnane heard the application and made a pseudonym order on the basis that PQR would not commence an appeal proceeding unless his family’s privacy was protected. The main terms of that order were that:

(1) The Appellant commence proceedings against the Secretary of the Department of Justice and Regulation (‘the proceedings’) as proposed without divulging the name of the Appellant and in lieu using the pseudonym ‘PQR’.

PQR filed his application for leave to appeal using the PQR pseudonym. The hearing was listed for hearing before Justice Bell. At that hearing, his Honour told a journalist present in the courtroom that a pseudonym order had been made, and that while he was free to stay and report the case, he could not identify PQR.

Solicitors for the Herald and Weekly Times (HWT) subsequently sought clarification from the court about the effect of the pseudonym order, and that issue was listed for hearing. The parties’ positions were:

* PQR submitted that the pseudonym order, in combination with the law of contempt, provided him with significant protection. However, to ensure complete protection, PQR also applied for a suppression order under s. 18(1)(a) of the OC Act.
* The secretary submitted that the pseudonym order, in combination with the law of contempt, provided PQR strong protection of his identity, and that there were serious questions about whether Justice Bell could or should make a suppression order under the OC Act.
* The HWT submitted that the pseudonym order did not prevent them from publishing PQR’s name if it was discovered independently, and that his Honour could or should not make a suppression order under the OC Act.

The questions for the court were:

1. Whether the pre-commencement pseudonym order prevented the HWT from identifying PQR in media reports about his appeal, and
2. Whether PQR was entitled to a suppression order under s. 18(1)(a) of the OC Act. This involved assessing whether the existence of a pseudonym order affected PQR’s application for a suppression order.

## Reasons for decision

### Principles of open justice

Justice Bell emphasised the fundamental principle that justice must be administered by the courts in public, as a safeguard against abuse of power or departure from impartiality. ‘Open justice’ requires that, unless departure from these principles is strictly necessary, journalists should be free to attend and report on legal cases, including the names of parties and witnesses.

### The legal effect of a pseudonym order

His Honour defined a pseudonym order as a type of suppression order that achieves its objectives in an indirect way, by requiring a person to be identified in a proceeding only by reference to a pseudonym.

While the OC Act purports to consolidate the laws in relation to suppression orders in Victoria, Justice Bell confirmed that constitutional principles mean that the Supreme Court retains the power to make pseudonym orders under its inherent jurisdiction.

His Honour then looked at whether the pre-commencement pseudonym order made by Justice Ginnane had the effect of preventing the HWT from publishing PQR’s name, even though the order did not explicitly prohibit publication.

Justice Bell held that the pseudonym order was enforceable by the law of contempt. This included a prohibition on attempts to frustrate its objectives, even where it was not a breach of its explicit terms. Further, it was clear from the authorities that the laws of contempt applied to non-parties who were aware of the order.

Given that the clear purpose of the pseudonym order was to protect the anonymity of PQR, Justice Bell held that it would be contempt if the HWT were to publish PQR’s name or the names of his family. His Honour said (at [99]):

It would seriously undermine the proper administration of justice to permit non-parties with notice or knowledge of the purpose of a pseudonym order made necessarily for the conduct of legal proceedings to take action, with impunity, that would have the effect of frustrating the purpose of the order.

### Was PQR entitled to a suppression order under the OC Act?

Under s. 18(1)(a) of the OC Act, a court may make a suppression order if the order is necessary to prevent a real and substantial risk of prejudice to the proper administration of justice, that cannot be prevented by other reasonably available means.

Justice Bell expressed doubts about whether PQR could establish a basis for a suppression order under s. 18(1)(a). In particular, his Honour questioned whether the potential impact on PQR’s family could be so great as to justify a conclusion that the applicant would be reasonably deterred from participating in the proceeding. However, Justice Bell concluded that PQR had legitimately sought and obtained pseudonym orders from both VCAT and Justice Ginnane. Therefore, it was unnecessary and inappropriate for discretionary reasons to reach a conclusion on this issue.

His Honour ultimately concluded that PQR failed to demonstrate that the assumed risk (of PQR being deterred from proceeding with the appeal) could not be prevented by other reasonably available means.

Justice Bell found that employing the law of contempt to enforce the pseudonym order represented a reasonably available means of preventing that risk. PQR’s application for a suppression order was therefore dismissed.

## Commentary

PQR (No 1) clarifies that the Supreme Court still has the capacity to make effective pseudonym orders under its inherent jurisdiction, despite the enactment of the OC Act.Further, it demonstrates that those orders have the practical effect of protecting the applicant from reporting that would identify them or their family.

This decision is available online at the [Austlii website](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2017/513.html) (http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2017/513.html)

**Note:** Victoria Legal Aid acted on behalf of the applicant at the hearing, with the assistance of Kristen Walker QC and Jessie Taylor.

*Case note prepared by Gemma Cafarella, Civil Advocate, Victoria Legal Aid.*