

Law Talk

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What's in a name?

Suppression orders
and open justice



What's in a Name?

Suppression orders have been known to be controversial. There are often questions as to whether they are granted too freely or infrequently: whether they hinder open justice or instead help to ensure perpetrators have a fair trial, or are used to protect the identity of victims. LawTalk journalist Sasha Borissenko investigates.

Canterbury University law Professor Ursula Cheer says the main purposes for suppression orders are to protect victims or those connected to the accused, and to ensure an accused gets a fair trial. In order for suppression orders to be granted, those factors must outweigh the rule of open justice.

“When I see instances where the media think far too many [suppression orders are] granted, and too easily, this mightn’t always be the case because it’s in the media’s interests to oppose them.”

In fact, figures issued under the Official Information Act in September show 880 people were granted permanent name suppression in 2009 – of whom 218 were convicted – and the figure dropped steadily each year, reaching 354 granted in 2012, including 222 convicted offenders.

While suppression order numbers were declining even before the Criminal Procedure Act 2011, reasons for the trend can be attributed to the legislation changes that see a clearer, more prescribed model for judges to abide by, Ms Cheer says.

The new legislation also provides standing for the media, as representatives of the public, to have input into whether name suppression ought to be granted. “The courts have a duty to be rigorous when it comes to the set-out guidelines. The figures show the principle of ‘open justice’ is being preserved as much as possible.”

The New Zealand public can be very punitive insofar as naming the accused is seen as part of the punishment in some sort of way and the media tend to follow suit, she says. “But that said, a person is entitled to a fair trial so they shouldn’t be shamed in the meantime. People need to think about it as a procedural thing where a number of grounds have to be satisfied. If name suppression is granted it doesn’t mean the person has gotten away with it.”

Celebrity would not amount to sufficient grounds for name suppression orders, despite popular belief, she says.

On the right to a fair trial

Law Society criminal law committee convener Jonathan Krebs says when name suppression isn’t granted, mud sticks, even if the allegations are not found to be true in a legal sense.

“Mud sticks, like an unpleasant scent in the air. You have to wonder whether there should be more of a force where name suppression should be granted until

a charge is dealt with. Very few people will remember the outcome of a case, but they will remember the allegation.”

Defence lawyer Michael Vesty, of Resolution Chambers in Nelson, says a fair trial can, in some cases, only be achieved by taking a position that appears irreconcilable with public perception.

“It seems perverse for a sentenced murderer to have his name suppressed in advance of his next murder trial, but that’s exactly what happened on the West Coast in a trial I was involved in some years ago.”

Mr Vesty says a defendant is entitled to be tried on the facts of the case. The law allows only relevant prejudicial evidence, not any prejudicial evidence.

“The risk is that the jury loses the wood for the trees and cannot get past the defendant’s past offending when considering the facts before them.”

Victim protection

Social justice activist Nicole Skews says suppression orders are crucial for ensuring victims aren’t identified.

“I support the freedom of press but not at the expense of the identities of people who have already been victimised.

“Part of the public concern with

suppression orders is how many high profile people seem to be granted suppression, and much of that is due to media reporting. You're far more likely to read about a sportsperson or entertainer with name suppression in court."

Many survivors who wish to speak out about their cases, or have their perpetrators named, have a hard time in doing so, Ms Skews says.

"In cases where there's a clear guilty verdict and the survivor is asking for suppression to be lifted, I think their wishes should be considered paramount.

"I'm not sure that the general public understands the frequency with which suppression orders are granted to protect victims who are family members and could therefore be easily identified without one, and it's my view that this should be a priority for media to communicate."

Ms Skews recalls a high profile case where a well-known entertainer sexually abused his 4-year-old daughter, and he was granted permanent name suppression.

The focus of name suppression in this

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women in exchange for drugs, two of the victims' mothers called for name suppression to be lifted. However, other than what was reported in the media, "we don't know if any of his other victims are relatives, or if the safety of the defendant's family is at risk, or other contributing factors in the suppression order".

"It's my view that media need to tread carefully in cases where it's unclear why name suppression has been granted, as unless all survivors are openly calling for the suppression to be lifted, the media ends up prioritising some survivors over others." ■

case became about the public's outrage at the judge's comments relating to the importance of the perpetrator's work.

There was a drive to name and shame the entertainer, rather than giving his daughter the right to grow up without being constantly identified as a victim of sexual abuse, she says.

"If there's reason to suspect a link can be made between naming the perpetrator and identifying a victim who does not want to be identified, any press breach of suppression is, in my view, unethical."

In a case in December where a prominent businessman was charged with sexual violence offences relating to an alleged "dungeon" where he reportedly abused young

What the media has to say

The media have an important role representing the public in the courts, and reporting on cases of public interest, Newspaper Publishers' Association editorial director Rick Neville says.

"It is fundamental to a democratic society and the principle of open justice that the media have free access to the courts.

"There is no doubt that making an offender's name public can comprise part of the punishment, which is why there are instances where reporters and editors are threatened by defendants, and occasionally their legal representatives, against publishing someone's name. But it is part and parcel of the open justice system we have in this, and similar, countries.

"The media believe that in an open society such as ours, justice should also be open – and be seen to be open. This is why media object

when they believe suppression orders are being granted too easily."

The media accept there are occasions when suppression orders are appropriate, such as protecting the identity of children, and ensuring that a person charged receives a fair trial, he says.

"However, many members of the media believe the application of suppression orders in this country is inconsistent and that is why on occasion newspapers, TV networks and radio stations will challenge the granting of such an order."

Mr Neville says the media strives for fairness insofar as reporters are trained to apply balance to the reporting of court cases to ensure, as far as is possible within the constraints of space and time, that both sides of an argument are presented. This approach is also taken in the editing process, he says.

Furthermore, the current law allows media to report names unless a suppression order is requested and granted in which case the name will not be published. Media operate within the law applying at the time, he says.

Meanwhile, according to retired High Court Judge and Press Council independent chairman Sir John Hanson, the Council occasionally considers a complaint about a breach of a suppression order, but only if the complainant can provide confirmation that the police are not taking up the matter.

"The Press Council can only consider the matter on an ethical basis, as we do not rule on legal issues. Such complaints are therefore generally dealt with under the 'fairness' aspect of the 'Accuracy, Balance and Fairness Principle'."