

MAGISTRATES COURTS OF QUEENSLAND

CITATION: *GHI v Queensland Police Service and Ors* [2023] QMC 12

PARTIES: **GHI**

(Defendant/applicant)

v

QUEENSLAND POLICE SERVICE

(Prosecution/first respondent)

and

ABC and DEF

(Complainants/second respondents)

And

QUEENSLAND NEWSPAPERS PTY LTD

NINE NETWORK PTY LTD

NETWORK TEN PTY LTD

(Participating media/third respondents)

FILE NO/S: MAG-00149797/23(8) and MAG-00149986/23(5)

DIVISION: Brisbane

PROCEEDING: Application for a Non-Publication Order

ORIGINATING COURT: Magistrates Courts of Queensland at Richlands

DELIVERED ON: 30 October 2023

DELIVERED AT: Richlands

HEARING DATE: 6 October 2023

MAGISTRATE: Magistrate Simpson

ORDER:

The Order of the Court is that:

1. Publication of any identifying matter in relation to the defendant including:

- a. The name of the defendant;**
- b. The address of the defendant;**
- c. The place of employment of the defendant; or**
- d. Any other particular of the defendant or another person likely to lead to the identification of the defendant.**

And any photograph, picture, videotape, digital image or other visual representation of the defendant or another person that is likely to lead to the identification of the defendant is prohibited pursuant to s 7D(1) *Criminal Law (Sexual Offences) Act 1978 (Qld)*.

2. For the purposes of this Order, “publication” means disseminate or provide access to the public or a section of the public by any means, including by:

- a. Publication in a book, newspaper, magazine or other written publication;**
- b. Broadcast by radio or television;**
- c. Public exhibition;**
- d. Broadcast or electronic communication; or**
- e. Social media.**

3. This Order does not apply to:

- a. A publication made by a legal representative or court officers for the purpose of the conduct of the committal proceedings (the proceedings);**

- b. The publication of a report of the proceedings in the form of a transcript of the committal to the parties to the proceedings;**
 - c. The publication of a report of the proceedings to a party to the proceedings;**
 - d. The publication of a report made by or to a law enforcement authority or police officer for the purposes of securing the attendance of a witness at a court or providing for the security and safety of a witness;**
 - e. Any other publication expressly permitted by order by a magistrate of this court in the conduct of the committal proceedings.**
- 4. This Order ceases to have effect if or when the defendant is committed for trial or sentence.**
- 5. The Court directs that the affidavits, exhibits and other materials filed in this application are to be placed in a sealed container, envelope or other appropriate receptacle and marked:**

“ Not to be opened without an order of a Magistrate of the Magistrates Court or Queensland ”

CATCHWORDS:

CRIMINAL PROCEDURE – Non-publication orders – Open justice – Public interest – Where complainant opposes the application - Special vulnerabilities of the defendant - Whether order necessary to protect the safety of a person – Proper approach – Calculus of risk – Psychological safety

EVIDENCE - Use of affidavit sworn on information and belief exhibiting medical opinion.

Criminal Law (Sexual Offences) Act 1978 (Qld), s 7
John Fairfax & Sons Ltd v Police Tribunal of New South Wales
Hogan v Australian Crime Commission (2010) 240 CLR 651
1986) 5 NSWLR 465
AB(A Pseudonym) v R (No 3)(2019) 97 NSWLR 1046

COUNSEL: Mr P McCafferty KC with Mr A O'Brien for the
defendant/applicant
Mr O'Brien for Queensland Police Service/first respondent
Ms C Schneider with Mr O Cook for the complainants ABC
and DEF/second respondent
Mr M Clarke for the participating media/third respondent

SOLICITORS: Bartley Cohen for the defendant/applicant
Marque Lawyers for the complainants/second respondent
Thomsen Geer for the participating media/third respondent

Introduction

2. As from 3 October 2023, the law in Queensland no longer prohibits the publication of the names of people charged with prescribed sexual offences prior to sentence or committal for trial or sentence.
3. If a person wishes to prevent their name from being published before sentence or committal, they must now apply for an order under s 7 *Criminal Law (Sexual Offences) Act 1978 (Qld)* (the Act).
4. The defendant, GHI, made that application which was heard on 6 October 2023.
5. I reserved my decision, and an interim order was granted by me preventing publication of her name until further order.

The charges

6. GHI was a contestant on a reality television program that aired on Channel 7 in September and early October 2023. In August 2023, before the program was televised but after filming, she was charged with 37 offences including indecent treatment of children, rape, sexual assault, assault occasioning bodily harm and torture. These alleged offences involve her now adult daughters and grandchildren. The period of overall alleged offending is between 2005 and 2023.
7. At the time of writing this decision the brief of evidence had not been disclosed and the allegations have not been tested in court. In any event, the strength of the case against her is not a factor in deciding this application.

Media interest

8. Prior to the change of the law, there had been considerable media interest in this case and the defendant. No doubt, in part, because of her appearance on television. There has been extensive speculation as to her identity.
9. The defendant's case has featured on the internet in mainstream news outlets such as *The Courier Mail*, *Herald Sun*, *Daily Mail Australia*, and *News.com.au*. Headlines from these outlets include:

Daily Mail Australia online

31 August 2023

Female reality show star is charged with string of child sex offences including 'rape and torture' as another male TV contestant is accused of serious assault

The Courier Mail

2 September 2023

Sex charges rock Seven

Herald Sun

2 September 2023 (approximately)

Woman who appeared on Channel 7 faces rape, torture charges

The Courier Mail online

29 September 2023

Two cases beat new laws as accused allowed to withhold identities

10. Other lesser-known news sources have published or re-published stories about the case and the defendant's links to a television program.
11. Further reporting has occurred on television including the Nine Network program "A Current Affair" and republished by them online as "**TV personalities accused of heinous crimes against children**". The online story includes the following text:

"A Current Affair can reveal that two TV personalities who have appeared on Channel 7 are accused of committing heinous crimes against children in Queensland.

.....

The man tried everything to keep his case in court secret, with his legal team choosing not to comment when approached outside the Richlands Magistrates Court.

However, we still can't tell you who the alleged perpetrators are.

When survivors find the courage to come forward and report their darkest secrets, they don't expect to watch television and see their alleged abusers promoted on national TV.

"It's really not good enough that we have got people who are facing serious charges being celebritised (sic) on a television show for commercial purposes," child protection advocate Hetty Johnston said.

.....

Johnston said society needs to be doing everything it can to protect victims.

“The only focus here is about the victims, the people who have been harmed” she said.

.....

Queensland parliament finally abolished the out-of-touch law today.

.....

The reform means the public can finally know the identity of any accused sex offender in Queensland who has been hiding behind old legislation, unless they can convince a judge to grant a suppression order.”

12. Some of the television coverage has including confronting the defendant in a public shopping centre carpark on the same day her application for non-publication order was being mentioned. This was done by “*A Current Affair*” and the vision of it put to air on 3 October 2023. Part of the transcript of this story is:

Chris Allen *While the woman’s lawyers were at court, she was doing a spot of shopping.*

[unidentified reporter] *Who paid for your lawyers? Who’s paying for your legal team?*

Hetty Johnston *There is no question in my mind that they set the people who’ve been charged here should have withdrawn from the television program – 100%. Also 100% that there is no way that a television station should allow people that they know have been charged with the kind of crimes we are talking about you, which are horrific, to continue in that program – to ‘celebritise’ them – is really unfair.*

.....

Hetty Johnston

Would be good to see that some of these names come out of the woodwork 'cause they're currently hiding there, laughing at the whole system at the minute.

13. Social media commentary – which is connected to “*A Current Affair*” stories republished on FaceBook on 13 September 2023 and 3 October 2023 - has allowed members of the public to publish their views about the defendant and the courts including:

Chris Szkwarek

20 September at 10:19

“About time you abolish this rubbish and the public could know the names of these sub humans.”

Grant Allen

17 September at 21:23

*“Once again the Judicial system in Australia protects the names of the Paedophiles!
MKRC My Kitchen Rapes Children!”*

Crown Tash

16 September at 21:01

“Its disgusting that the legal system protects such filth (angry emoji) Name and shame them all, including the politicians this time!! Australia is ready, we already know but it's time it became mainstream news!!”

Donna Slattery

16 September at 13:53

“Omg so wrong, show the evil maggots faces (various emojiis follow)”

Glenda Merritt

3 October 2023

“!! SAVE THE CHILDREN !!

Channel 7 protecting pedophiles (sic), expose EVIL (emoji)

They keep each other's secrets, the PEDO CULT. "

Tahnee Butt

3 October 2023

"Cool you can find out all the rock spiders charged in Queensland now they can but we will shot you in the head!"

Cindie Lee Klimczak

3 October 2023

"This is bullshit no one should be above the law fucking disgraceful and a let down to the victims fuck you Qld high court you have shown status is more important than the victims of serious crimes."

Nicole Piper

3 October 2023

"#WeSeeYou"

14. At least one social media website has published posts from various users that name the defendant.
15. In mid-September the defendant posted videos on social media to either her friends or the wider world outlining her general situation and how she will *"fight the fight"*. She also outlined that she would post several videos however this doesn't seem to have eventuated.

The complainants

16. The complainants want to be able to identify themselves as and when they wish to.

The defendant's mental health

17. The defendant has a complex past personal and medical history. This was extensively detailed in the report of Dr Luke Hatzipetrou, Clinical and Forensic Psychologist dated 4 October 2023. He undertook an assessment of the defendant on 25 September 2023 with an update on 4 October 2023 following the media harassment. He had

reference to correspondence from the defendant's treating GP and psychologist. He also had regard to the media publications.

18. This assessment was in the wake of an unplanned and spontaneous suicide attempt in mid-September. At the time she had been informed that the complainants had contacted Channel Nine, providing information to "*A Current Affair*". She was informed of the derogatory comments and abuse emerging on social media platforms. She felt hopeless and helpless. A friend suggested she have "*half a glass of red wine*" with Valium to assist with sedation. She said she wasn't "*thinking properly*" and "*didn't want to be here anymore*" and took a number of more Valium tablets. She was taken by ambulance to the Princess Alexandra Hospital. She was later given continuous supervision and support by friends and family. She has also been monitored by her medical practitioners and been compliant with medication.
19. Upon examination in late September, Dr Hatzipetrou observed that the defendant's mood was depressed, and she had symptoms of anxiety, catastrophic thoughts, feelings of hopelessness, anhedonia, nihilistic thoughts and suicidal ideation. The allegations and charges have had a profoundly adverse impact on her. He believed her symptoms and anxiety to be severe and there was evidence of distress and impairments in the defendant's ability to undertake aspects of day-to-day functioning. He believed she remained a high risk of suicide despite the supports and interventions. He made this assessment whilst carefully considering her complex history.
20. Dr Hatzipetrou re-assessed the defendant on 4 October 2023. She reported as being shocked by the confrontation on 3 October 2023. She recalled returning to her vehicle after grocery shopping and observing three men alight from another vehicle in close proximity to hers. For various reasons she believes these people must have followed her from her home to the shops. The defendant referred to increased anxiety that manifested into a panic attack when she got home. She got into her car, called her lawyer, locked the door all the while the media continued to ask questions. She recalled the journalist questioned her reasons for harming the children and who was paying her legal costs.

21. As a result of the confrontation the defendant feels unsafe entering the community to undertake general tasks and work. According to the medical report, she is now fortified in her belief that people will harm her and her family. Following this incident she has not slept, remains hypervigilant and anxious.

22. Dr Hatzipetrou concludes:

“The encounter with media are intrusive and unexpected and more so, she is confronted with statements or questions suggesting she perpetrated the alleged offences. Coupled with online abuse through social media platforms, (the defendant) fears for her safety and feels there is evidence that vigilantes will attempt to harm them, destroy property, or reveal their identity to the broader public.

The opinions stated in the report remain unchanged while the recent incident has fortified (the defendant’s) fears and perpetuate the mental health disorders. If she does not leave the house, the opportunities to access mental health services and undertake normal routine activities are likely to negatively impact and aggravate her mental state.

At this juncture, the available findings indicate (the defendant’s) mental state has deteriorated. Coupled with the knowledge that media personnel continue to approach her in a similar manner, the release of her identity to the broader public poses a significant destabilising factor upon her mental state and more so, her capacity for judgement and reasoning. As such, the risk of intentional self-harm and/or suicide remains high. The aggravating factor is her related impairments in self-regulation which are a product of her mental health disorder, as evidence by her attempt at suicide on 15th of September 2023.”

23. There are other medical reports referred to in the defendant’s material. Nothing detracts from the opinion expressed above.

The law and analysis

The parties

24. A complainant, defendant or the prosecution can commence an application for a non-publication order. Once commenced, accredited media entities or any other person the court considers has sufficient interest may join in the hearing of the application. (s 7C(1)(a) to (d) the Act) All the parties here fit within the legislation.

The evidence that can be used

25. Pursuant to s 7C(2) of the Act, part of this application related to the defendant's medical history was heard in closed court and I gave my reasons on that at the time. They are in the transcript and won't be dealt with here.
26. In hearing the application, the court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances. (s 7C(3)(a)).
27. The evidence in this application was given by affidavit from the solicitors for the parties on information and belief. The material I have referred to above came from exhibits to these affidavits. A standard way to proceed in an interlocutory proceeding.
28. Despite this standard approach, both the complainant and the participating media attempted to impugn the strength of the evidence because the medical practitioners had not sworn their own affidavits, they were not available for cross examination and the defendant herself had not given sworn evidence.
29. As to the medical evidence neither party sought an application for an adjournment to have Dr Hatzipetrou produced for cross examination. Counsel for the second and third respondents were – as Alexander Pope wrote - willing to wound but not prepared to strike.
30. The submission that the evidence lacked weight because it was not sworn to by the report writer is flawed and I reject it. Dr Hatzipetrou outlined in his report that the opinions he expressed were genuinely held after making all enquiries appropriate for the rendering of the report. He also outlined that he was bound by his duty as an

expert and had read the *Code of Conduct – Expert Witness* as found in the *Uniform Civil Procedure Rules*. Nothing more would be achieved in an interlocutory application by having the doctor append his report to his own affidavit. Dr Hatzipetrou is well known and well regarded in Queensland.

31. Further, criticism was made of the medical opinion being based on the self reporting of the defendant. A surprising submission as most expert opinions, particularly mental health related opinions, are based on the subjective reports of the patient and how they objectively present at the time of assessment. It also ignores the assurance that Dr Hatzipetrou gave that his views are genuinely held after making all relevant enquiries.
32. Lastly, any criticism of the defendant for not giving sworn evidence in this application misapprehends the nature of criminal proceedings. This application is a part of a criminal proceeding in which the defendant remains as a matter of law, innocent until proven guilty and maintains her right to silence. If she was to give evidence in this application, she could be liable to cross examination by all parties including the prosecution. She is entitled to her current position.
33. I reject the submissions related to the weight of the evidence and accept the expert opinion of Dr Hatzipetrou without qualification.

The procedure

34. Section 7B of the Act provides the basis on which a non-publication order can be made. It includes that an order may be made if it is *necessary* (my emphasis) to prevent prejudice to the proper administration of justice or protect the safety of any person. Both grounds were relied on by the defendant. If one succeeds, then the other is superfluous. I will focus on the need to protect the defendant's safety bearing in mind the medical opinion.
35. The process of determining the application after receiving the evidence and hearing from the relevant parties is outlined in s 7C(3) of the Act. The court must have regard to a non exhaustive list of factors including the primacy of the principle of open

justice, the public interest, the views of the complainant and any special vulnerabilities of the complainant or defendant. (s7C(3)(b)(i) to (iv)) These factors are the only ones that apply in this application. Other factors not relevant here are found at s 7C(3)(b)(v) to (ix).

Open Justice and Public Interest

36. McHugh J explained the principle of open justice in *John Fairfax & Sons Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465 at 476-7

The fundamental rule is that the administration of justice must take place in open court. A court can only depart from this rule where its observance would frustrate the administration of justice or some other public interest for whose protection Parliament has modified the open justice rule. The principle of open justice also requires that nothing should be done to discourage the making of fair and accurate reports of what occurs in the courtroom. Accordingly, an order of a court prohibiting the publication of evidence is only valid if it is really necessary to secure the proper administration of justice in proceedings before it. Moreover, an order prohibiting publication of evidence must be clear in its terms and do no more than is necessary to achieve the due administration of justice. The making of the order must also be reasonably necessary; and there must be some material before the court upon which it can reasonably reach the conclusion that it is necessary to make an order prohibiting publication. Mere belief that the order is necessary is insufficient.

And at 481 he emphasised how open justice was vital to public confidence in the administration of justice and to dispel rumours and falsehoods about what was being decided

....the public would be ignorant of the workings of the courts whose proceedings would inevitably become the subject of the rumours, misunderstandings, exaggerations and falsehoods which are often associated with secret decision making. The publication of a fair and accurate reports of court proceedings is therefore vital to the proper working of an open and

democratic society and to the maintenance of public confidence in the administration of justice.

37. When applying the principle of open justice and public interest to this matter I have had regard to the media interest summarised above. Some of the on camera and social media commentary connected with the reporting by Nine Network program “*A Current Affair*” in September, has been appalling and dehumanising to the defendant. That commentary was made by people who know nothing about the evidence nor have any regard for the presumption of innocence of the defendant.
38. The nature of the story on Channel Nine on 3 October 2023 was cast in such a way as to infer that the defendant was hiding and doing something wrong by exercising her rights and making this application. Harassment of the defendant in the community by media has continued, including on the day the directions order was made by me in court.
39. I fail to see how the prior publication of the defendant’s name would have made this kind of reporting fair or accurate or even promote the greater discussion of matters of public interest. The only thing sought here is a non-publication of the defendant’s name or other identifying feature. All other aspects, including the nature of the charges, underlying general facts, the fact she was a contestant on a television program and the outcome of any steps up until any committal can still be published. Such reporting must be fair and accurate if it seeks to advance open justice.
40. Despite my serious concerns about some of the reporting and social media lynching associated with it, the principle of open justice remains, and all media outlets should not be punished because of the conduct of one media outlet or individual commentators.
41. The open justice principles must also be considered against the fact that the defendant published online content referred to above and that some sites on the internet have already revealed her name.

42. It is argued that the defendant cannot seek the cloak of anonymity after she has already revealed herself online but doesn't like the result of other media interest in this matter. My assessment is that the videos posted by the defendant do not address the allegations directly and are a little oblique. These videos are focused on the stress she is under the fact that she will fight "lies" being spread about her. She has not fully revealed herself even though an enquiring mind might join the dots between these posts, her television appearance, and the existing reporting as to the nature of the charges.
43. As to the websites that reveal the defendant's name, these would be in breach of the pre-existing laws and any order made by a court. The posts identifying the defendant have been suggested by the complainants to mean that the making of any order would not serve any purpose. I disagree. The court should not avoid making an order to, in effect, give way because of others who have breached the law. The application must still be considered using the principles in s 7C of the Act.

The views of the complainants

44. As I have identified above the complainants wish to be able to identify themselves as they see fit. Other than this general concept, there wasn't any evidence to suggest what harm or overall disadvantage might come to them or the public at large should they not be able to identify themselves now. No vulnerabilities of the complainants have been identified. Their position must be balanced against the other factors and particularly the special vulnerabilities of the defendant.

The special vulnerabilities of the defendant

45. The evidence of Dr Haztipetrou could not be plainer:

“the release of her identity to the broader public poses a significant destabilising factor upon her mental state and more so, her capacity for judgement and reasoning. As such, the risk of intentional self-harm and/or suicide remains high. The aggravating factor is her related impairments in

self-regulation which are a product of her mental health disorder, as evidence by her attempt at suicide on 15th of September 2023.”

46. There would be few better examples of a special vulnerability of a defendant in my view. She is at risk of not being able to access her needed medical care if she is identified and feels forced to bunker down at home. She is at risk of making a life ending decision if confronted with any more adverse reporting naming her in this case. Because of the nature of the reporting thus far, my belief is that, if allowed, the reporting and naming would be extensive and potentially activate the concerns of Dr Hatzipetrou. The report establishes that the defendant is not someone trying to hide behind a mental illness; she is a fragile person that is a risk to herself.

The application of the above factors to whether a non-publication order is necessary

47. An order is not “necessary” if it merely appears to the Court to be convenient, reasonable or sensible, or to serve some notion of public interest. (*see Hogan v Australian Crime Commission* (2010) 240 CLR 651 at [30]-[31] per French CJ, Gummow, Hayne, Heydon and Kiefel JJ.)
48. The parties agree and I accept that the proper way to determine an application for a non-publication order; for the necessity to protect the safety of the defendant; requires the court to adopt a “calculus of risk approach” (*see AB(A Pseudonym) v R (No 3)*(2019) 97 NSWLR 1046 at [56]-[58] per Hoeben CJ, Price and Adamson JJ.). The court is to:

“.....consider the nature, imminence and degree of likelihood of harm occurring to the relevant person. If the prospective harm is very severe, it may be more readily concluded that the order is necessary even if the risk does not rise beyond a mere possibility.”

49. The prospective harm here is suicide or self-harm. The risk of that harm is high. That risk would be adversely impacted by the releasing of the defendant’s name at this time.

50. Whilst having due regard for the primacy of open justice, the public interest and the views of the complainant; the simple fact is this defendant is in need of her safety being protected. That need is a necessary need. The straightforward and unchallenged evidence of Dr Hatzipetrou makes that abundantly clear. This need is beyond mere convenience to avoid embarrassment or scrutiny. The public interest would also not be served if the defendant did not have this immediate protection and acted to harm herself. The complainants and community would not have seen justice served in those circumstances. Open justice also remains with other the facts concerning this matter still being publicly available.

Conclusion

51. For the reasons outlined above I make a non-publication order in the following terms:

Publication of any identifying matter in relation to the defendant including:

- a. The name of the defendant;
- b. The address of the defendant;
- c. The place of employment of the defendant; or
- d. Any other particular of the defendant or another person likely to lead to the identification of the defendant.

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- e. Any other publication expressly permitted by order by a magistrate of this court in the conduct of the committal proceedings.

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The Court directs that the affidavits, exhibits and other materials filed in this application are to be placed in a sealed container, envelope or other appropriate receptacle and marked:

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