

# HIGH COURT OF AUSTRALIA

GLEESON J

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**S168/2023**

IN THE MATTER OF AN APPLICATION BY ANNA LAVERACK FOR  
LEAVE TO ISSUE OR FILE

**S29/2024**

IN THE MATTER OF AN APPLICATION BY ANNA LAVERACK FOR  
LEAVE TO APPEAL

**S31/2024**

IN THE MATTER OF AN APPLICATION BY ANNA LAVERACK FOR  
LEAVE TO APPEAL

[2024] HCASJ 21

*Date of Judgment: 4 June 2024 (amended 2 July 2024)*

S168 of 2023, S29 of 2024, S31 of 2024

## **ORDER**

- The 22 May 2024 application will be refused.*

## **Representation**

The applicant is unrepresented



GLEESON J.

### **Application**

1 By an application dated 22 May 2024, the applicant seeks an order that she be "granted a permanent pseudonym in the records of the Court to restrict identifying me to the public" in the three proceedings in this Court, being: (a) S168 of 2023; (b) S29 of 2024; and S31 of 2024. The application is supported by an affidavit affirmed by the applicant on 21 May 2024.

2 Proceeding S168 of 2023 was finalised by an order dated 1 February 2024 that the applicant's application for leave to issue or file the document entitled "Application for a Constitutional or other Writ", dated 14 December 2023, was dismissed without an oral hearing. Beech-Jones J found that the proceedings that the applicant sought to commence were "clearly an abuse of process, frivolous and vexatious". The 14 December 2023 application sought relief in relation to proceedings in the Federal Court of Australia NSDXXXX/2023. In her affidavit, the applicant stated that the subject matter of proceedings NSDXXXX/2023 is sensitive and controversial.

3 On 29 February 2024, Beech-Jones J dismissed the applicant's further application dated 22 February 2024, also filed in proceeding S168 of 2023, without an oral hearing. That application had sought orders restricting the identification of the applicant in relation to proceeding S168 of 2023. Beech-Jones J was not satisfied that any of the orders sought were necessary having regard to the public interest in open justice. His Honour noted that his reasons for the 1 February 2024 order, identifying the applicant by her name, had been published including on the Court's website for weeks and that no pseudonym order was sought when the applicant filed her application for leave to issue or file that 14 December 2023 application.

4 Proceeding S29 of 2024 was finalised on 9 May 2024 by an order refusing the applicant leave to appeal from Beech-Jones J's refusal of leave to file or issue the 14 December 2023 application. In refusing leave, Gordon and Steward JJ found that the proposed appeal would enjoy no prospects of success.

5 In proceeding S31 of 2024, the applicant sought leave to appeal from Beech-Jones J's dismissal of the 22 February 2024 application. In refusing leave, Gordon and Steward JJ found that the proposed appeal would enjoy no prospects of success and did not raise any question of law of public importance.

### **Evidence in support of the application**

6 The applicant's affidavit shows that on 7 March 2024 in Federal Court proceeding NSDXXXX/2023, Kennett J made the following orders:

2.

"2. Pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth), until 26 April 2024 or earlier order:

- a. the identity of the applicant not be published or otherwise disclosed other than to court staff, any legal advisers retained by the applicant, the respondents and their lawyers.
- b. the applicant be referred to by a pseudonym in any public notifications and disclosures of information in relation to the proceeding.

3. The applicant is to file any application for further suppression or non-publication orders by 5 April 2024."

7 The order does not specify the ground or grounds on which order 2 was made.<sup>1</sup> Section 37AI empowers the Court to make an interim suppression or non-publication order without determining the merits of the application.

8 The affidavit also discloses that, on 21 March 2024, the applicant filed an appeal against parts of the 7 March 2024 orders in Federal Court proceeding NSDXXX/2024. Further, on 5 April 2024, the applicant received a message from the NSW Registry of the Federal Court which stated, relevantly:

"Justice Kennett is content to:

- extend the suppression order made on 7 March 2023 until 4 weeks after the determination of her application for leave to appeal in NSD[XXX]/2024;
- extend the time for you to file any further application for suppression or non-publication orders until 2 weeks after the determination of her application for leave to appeal in NSD[XXX]/2024.

... Justice Kennett will not exercise any power in relation to this case until her application for leave to appeal in NSD[XXX]/2024 is heard and determined."

9 The applicant's affidavit states that order 2 of Kennett J's 7 March 2024 orders was made on the grounds of safety risks to the applicant. The affidavit does not reveal whether Kennett J was aware of Beech-Jones J's 29 February 2024 decision and reasons either at the time of making the 7 March 2024 orders, or at

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<sup>1</sup> cf s 37AG(2) *Federal Court of Australia Act 1976* (Cth).

3.

the time that the message contained in the 5 April 2024 email was communicated by Kennett J's chambers to the NSW Registry of the Federal Court.

### Consideration

10 Section 77RF of the *Judiciary Act 1903* (Cth) empowers the Court to make a suppression order or non-publication order on one or more of four grounds including that the order is necessary: (a) to prevent prejudice to the proper administration of justice; and (c) to protect the safety of any person. The applicant contends that the pseudonym should be granted on either or both of these grounds.

11 As Beech-Jones J explained in his 29 February 2024 reasons, by s 77RD of the *Judiciary Act*, the Court "must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice". The word "necessary" in s 77RF requires more than satisfaction that a suppression or non-publication order is appropriate or desirable.<sup>2</sup>

12 Without any reasons given by Kennett J for making the 7 March 2024 orders and taking into account that order 2 was expressly made pursuant to s 37AI of the *Federal Court Act of Australia Act 1976* (Cth) (so that it may have been made without an assessment of the merits of the applicant's claim for non-publication or suppression of her identity), I am not satisfied that order 2 was made on the grounds of safety risks to the applicant. Accordingly, and without any other evidence in support of the claim that the orders sought by the applicant are necessary to protect her safety, I am not satisfied of that necessity. Further, without evidence that Kennett J has assessed the merits of the applicant's claim for a pseudonym in the Federal Court, I am not satisfied that the orders sought are necessary to prevent prejudice to the proper administration of justice.

### Conclusion

13 Accordingly, the 22 May 2024 application will be refused.

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<sup>2</sup> *Hogan v Australian Crime Commission* (2010) 240 CLR 651 at 664 [30].