

Responses from Justin Quill,

Do you think the provision is being used correctly? Why/why not?

I don't think the ground for making a suppression order to protect someone's safety is being used properly. It wasn't designed to protect "mental safety", and it certainly wasn't designed to allow defendants to effectively threaten the Court (and therefore the public) with a consequence if they don't get the secrecy they demand.

If not, can you please reflect on observations by commentators (including yourself) who have made the argument that a two tier system of concealing one's identity is emerging in Victoria - can you please explain how that works and why it conflicts with the spirit of the law and principles of open justice?

It takes money to apply for a suppression order. There are psychiatrists required and lawyers and KCs to argue it. As a general rule, the better (and more expensive) your legal team, the more likely you are to achieve the secrecy you desire. In the Tom Silvagni case, he had two barrister teams led by highly experienced KCs - one focused on his criminal trial and an entirely separate barrister team dedicated solely to his bid for secrecy. Very few people can afford a KC at all, let alone two separate KCs and barrister teams – one focussed only on keeping their name out of the media.

What is the solution to this problem?

There needs to be a change to the legislation to make it clear the safety ground is to be used where someone's safety is threatened by someone else. There also needs to be cultural change amongst barristers (who ask for suppression orders too often and too easily), and judges (who make suppression orders too often and too easily).

What does it mean for transparency of the justice system?

More suppression orders mean secret justice and that undermines the public's confidence in the judicial system – amongst other things.

What does it mean for the public's faith in the proper administration of justice?

Some people will feel like you can get a better run before the courts and achieve secrecy if you have money.