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PROTECTION OF CHILDREN: DIVERGENT APPROACHES TO THE MAKING OF A SUPPRESSION ORDER: *AB V CD* (2019) 364 ALR 202

> 'There can be no keener revelation of a society's soul than the way in which it treats its children.'[1]
>
> *Nelson Mandela*

I A Primary Consideration

In discussing the legal obligation to consider the best interests of a child, one might point to the well-traversed principles governing the courts' *parens patriae* jurisdiction,[2] the objects of the *Family Law Act 1975* (Cth),[3] or, indeed, Australia's obligations under international law.[4] Instead, it is likely that quite apart from the multitude of legal obligations

> any reasonable person … would, in my view, assume that the best interests of the child would be a primary consideration in all administrative decisions which directly affect children as individuals and which have consequences for their future welfare.[5]

Justice Gaudron's aphorism could well be applied to any intervention of the State that involves children. We all hold a basic assumption that our society will protect its children, and all vulnerable members of society, as a paramount consideration.

That then, perhaps strangely, leads us to the series of applications for non-publication orders over the name and image of the former barrister and police informant popularly

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1 Address by President Nelson Mandela at the launch of the Nelson Mandela Children's Fund, Pretoria, 8 May 1995 <http://www.mandela.gov.za/mandela_speeches/1995/950508_nmcf.htm>.

2 See, eg, *J v C* [1970] AC 668, 699–700 (Lord Guest).

3 *Family Law Act 1975* (Cth) s 60B.

4 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1).

5 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 304 (Gaudron J).

known as Lawyer X ('*AB* Decisions'). A critical feature of the *AB* Decisions was the balancing act undertaken by the High Court of Australia and the Courts below to weigh up, on the one hand, EF's[6] safety as an informant and, on the other, the integrity of the criminal justice system.[7] Important too are the deeply concerning ethical ramifications that have arisen out of EF's conduct.[8] Yet, this case note will consider neither of these issues. Rather, I am far more concerned with EF's separate and distinct applications to the Victorian Supreme Court of Appeal ('Court of Appeal') and the High Court to suppress the names and images of her two children.

Whatever one's opinion of EF or her conduct, the treatment of her children should have been a matter of little controversy. If, as was accepted, the children were at risk without a non-publication order, and if, as could scarcely be argued, there was no legitimate public interest in their identities being known,[9] doubtless then most people would have expected the children's identities to be suppressed. However, on this very point, the two courts arrived at irreconcilably divergent conclusions. Remarkably, on 21 February 2019, the Court of Appeal dismissed EF's application for a non-publication order in respect of her children.[10] Only six days later in the High Court, considering the same law and largely the same evidence, Nettle J (sitting as a single Justice) granted a 15-year non-publication order over the children's identities.[11] This case note will examine how the Courts came to such markedly different results.

II Fundamental and Appalling

A *AB, CD, EF and IBAC*

To understand why EF was seeking the orders she was, it is necessary to delve into some of the broader background. The genesis of the proceedings was in February 2015, when the Victorian Independent Broad-Based Anti-Corruption Commission

6 I will refer to her by the pseudonym given to her by the various courts: *AB v CD* [2017] VSC 350, [1] (Ginnane J); *AB v CD* [2017] VSCA 338, [1] n 1 (Ferguson CJ, Osborn and McLeish JJA); *AB (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1, 3 [1] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

7 See *AB (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1; *AB v CD* [2017] VSCA 338; *AB v CD* [2017] VSC 350.

8 See Arthur Moses SC, 'Opinion Piece: Breach of Duties from Lawyer X, Police an Attack on Democracy and Justice', *Law Council of Australia* (Opinion, 22 February 2019) <https://www.lawcouncil.asn.au/media/news/opinion-piece-breach-of-duties-from-lawyer-x-police-an-attack-on-democracy-and-justice>.

9 None of the parties sought to challenge either of these points — with the curious exception of The Age and the media parties, an exception to which I will later return: *AB (a pseudonym) v CD (a pseudonym)* (2019) 364 ALR 202, 207 [20] (Nettle J); *AB v CD* [2019] VSCA 28, [86] (Ferguson CJ, Beach and McLeish JJA).

10 *AB v CD* [2019] VSCA 28, [89]–[90].

11 *AB (a pseudonym) v CD (a pseudonym)* (2019) 364 ALR 202, 207 [21] (Nettle J).

('IBAC') provided the Victorian Commissioner of Police with a report critical of EF's role as a police informant.[12] The Police Commissioner (referred to as AB in proceedings) provided the IBAC Report to the Victorian Director of Public Prosecutions (referred to as CD in proceedings). With the content of the IBAC Report being what it was, the Victorian Director of Public Prosecutions ('DPP') considered that he was under a duty to disclose information from the report to persons who had been convicted as a result of information sourced from EF.[13]

Of course, the right of convicted persons to know the relevant information must be balanced against EF's right, as a police informant, to be kept safe. In the circumstances, the Police Commissioner considered that EF and her children would be at a real risk of harm if the information in the IBAC Report were disclosed. As such, the Police Commissioner instituted proceedings in the Supreme Court of Victoria asserting that the information was subject to public interest immunity. EF was joined to those proceedings, but also launched separate proceedings of her own arguing that disclosure would constitute an equitable breach of confidence.[14]

Justice Ginnane, hearing both proceedings concurrently, dismissed the claims of both the Police Commissioner and EF.[15] On appeal, the unanimous Court of Appeal dismissed the appeals from both the public interest immunity and breach of confidence proceedings.[16] Subsequently, in a highly publicised decision, the High Court revoked its earlier grant of special leave — taking the opportunity to decry the 'fundamental and appalling breaches' by EF of her ethical obligations and duties to the court.[17]

B *(Un)necessary*

After the High Court's highly publicised revocation of special leave,[18] the DPP was free to disclose the details of EF's conduct to her former, now convicted, clients. Importantly, the resulting public outrage over EF and Victoria Police's conduct had culminated in Victorian Premier Daniel Andrews announcing the Royal Commission into the Management of Police Informants ('Royal Commission').[19]

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12 *AB (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1, 3 [1].

13 Ibid.

14 Ibid 3 [2].

15 See *AB v CD* [2017] VSC 350, [422]; *EF v CD* [2017] VSC 351, [38].

16 *AB v CD* [2017] VSCA 338, [214], [231].

17 *AB (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1, 4 [10], 5 [13].

18 *AB (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1, 5 [13].

19 Royal Commission into the Management of Police Informants, 'About the Commission', *Royal Commissioner into the Management of Police Informants* (Web Page, 12 July 2019) <https://www.rcmpi.vic.gov.au/the-commission>; 'Victorian Government Calls Royal Commission into Potentially Tainted Gangland Convictions', *ABC News* (online, 3 December 2018) <https://www.abc.net.au/news/2018-12-03/victorian-government-royal-commission-gangland-convictions/10577198>.

Of course, for the Royal Commission to function effectively it could not confine itself to the EF and Lawyer X monikers. It needed to disclose EF's real name and image and, in turn, allow those persons responding to notices to make similar disclosures. Recognising the reality of the Royal Commission's mandate, the High Court varied its earlier orders to allow those disclosures to be made.[20] In response, the Police Commissioner and EF filed separate applications in the Court of Appeal seeking permanent non-publication orders in relation to EF's real name and image.[21] EF additionally sought, inter alia, permanent non-publication orders in respect of the real names and images of her children.[22] It should be acknowledged that, at least as far as EF herself was concerned, these applications would have been of limited utility. Not only did EF's former clients already know her identity, but a quick glance at the law reports would have revealed her name recorded as counsel.

The Court of Appeal's power to make suppression orders of the kind sought by the Police Commissioner and EF is found in s 17 of the *Open Courts Act 2013* (Vic). In keeping with principles of open justice, the Act requires a presumption in favour of the disclosure of information.[23] Even with that presumption in mind, the court's discretion is still not at large — the court must further be satisfied that the order is *necessary* to achieve one of a defined number of purposes.[24] For the Police Commissioner and EF, two of those purposes were relevant, namely that

> (a) 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;
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> …
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> (c) the order is necessary to protect the safety of any person …[25]

At least for the application concerning the children, we can see that the latter is the relevant ground.

In examining the Court of Appeal's reasons for ultimately dismissing the applications, there are three points to be made — the positions that the parties and the intervenors took; the meaning their Honours ascribed to 'necessary'; and their Honours' assessment of the risk to the children's safety.

Plainly, on the application to suppress EF's name, the battle lines were clearly drawn. On one side, the Police Commissioner and EF resisted disclosure — on the

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20 *AB v CD* [2019] VSCA 28, [7].

21 Ibid [8], [11].

22 Ibid [11].

23 *Open Courts Act 2013* (Vic) s 4; *AB v CD* [2019] VSCA 28, [65].

24 *Open Courts Act 2013* (Vic) s 18(1).

25 Ibid ss 18(1)(a), 18(1)(c); *AB v CD* [2019] VSCA 28, [68].

other, every man and his dog wanted her identity known.[26] Despite the parties being seemingly intractable, when it came to EF's children the influence of everyone's humanity began to blur those lines. None of the DPP, the Commonwealth DPP nor the *amici curiae* opposed the application in respect of the children.[27] Counsel representing the Royal Commission only made limited submissions on the issue, simply acknowledging that the children's names were not relevant to its inquiry, nor did they need to be disclosed.[28] In stark contrast, the media parties,[29] for whatever reason, opposed the application in spite of their submission that

> it was unlikely that media interests would wish to publish those details in connection with publication of the subject matter of the present proceedings.[30]

This was the situation with which the Court of Appeal was faced. Of the seven parties making submissions, only one actively opposed non-publication orders being made in respect of the children.

The crucial issue in all the applications was whether the orders were *necessary*. Yet, despite that significance, if you were not paying attention you might have missed their Honours' fleeting discussion of the meaning of the term. Their Honours considered that 'necessary' required a 'high standard of satisfaction', a standard that could not be met if it was merely 'reasonable' to make the order.[31]

That then brings us to the determinative question — was a suppression order necessary to protect the safety of the children? The Court of Appeal's answer to that question was, at times, both internally contradictory and at odds with the evidence presented. To begin, in deliberating the necessity of the order, their Honours considered the safety of EF and her children together. For their Honours, there was 'no doubt that EF is at considerable risk (and that her children are likely to also be at risk)'.[32] Against that, their Honours emphasised two countervailing considerations. First, that while a lack of a non-publication order might increase publications about EF, those with the most interest in harming her already knew her name. Secondly, that there

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26 By this time the DPP, the Commonwealth Director of Public Prosecutions ('Commonwealth DPP') (intervening), the *amici curiae* for the convicted persons, the Royal Commission (intervening) and certain media parties (intervening) all made submissions opposing the applications: *AB v CD* [2019] VSCA 28, [12] (Ferguson CJ, Beach and McLeish JJA).

27 Ibid [34], [39], [56].

28 Ibid [48].

29 The media parties included a varied mix of News Corp Australia companies (Herald & Weekly Times Pty Ltd and Nationwide News Pty Ltd), Nine/Fairfax Media's The Age Company Ltd and Seven Network (Operations) Ltd. It is standard practice under the legislation to notify relevant news media organisations of an application for a suppression order: *Open Courts Act 2013* (Vic) s 11(1).

30 *AB v CD* [2019] VSCA 28, [52].

31 Ibid [68].

32 Ibid [73].

was no evidence of any actual attempt of harm against EF or her children.[33] For those reasons, their Honours were not satisfied that the orders were 'necessary' to protect the safety of EF or her children.[34] This finding was despite hearing and acknowledging the unchallenged opinions of senior police officers that

> if the disclosures CD wished to make to convicted persons were made then the risk of death to EF would become 'almost certain' …[35]

Unnecessary indeed. Even if their Honours had concluded otherwise, the outcome in respect of EF would not have changed. Their Honours considered that s 18(1)(c) contained a discretion, and that 'powerful countervailing considerations regarding the proper administration of justice' would have swayed that discretion against making an order, even had their Honours considered it necessary to protect EF's safety.[36]

Of course, the discussion above concerned not the order sought in respect of the children, but the order sought in respect of EF herself. However, we would expect that the weight given to the evidence concerning the children's safety would universally apply to both orders. That is especially so given that the Court of Appeal's consideration of the order specific to the children was only in the briefest of terms. Indeed, their Honours added only two additional points against the granting of the order — that there was no threatened publication of the children's names or images; and that the Court had already made orders redacting their names from judgments and other documents obtainable from the Court's file.[37] Their Honours concluded by saying that

> at present we are unable to see any legitimate public interest in the publication of the identities and details of EF's children in connection with the subject matter of the proceedings.[38]

Notwithstanding this conclusion, and quite incredibly, the Court of Appeal was not satisfied that an order was 'necessary' for the purposes of s 18(1)(c) and so refused EF's application to suppress the names of her children.[39]

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33 Ibid [75].

34 Ibid [76].

35 Ibid [75].

36 Ibid [78]. The Court of Appeal's discussion of those countervailing considerations (at [69]–[72]) although relevant to the application in respect of EF, could not be relevant to that concerning her children.

37 Ibid [85].

38 Ibid [86].

39 Ibid [87], [89]–[90].

C *Children of Relatively Tender Years*

Unlike the Court of Appeal, Nettle J in the High Court was presented with only one issue — EF's application for orders pursuant to s 77RE of the *Judiciary Act 1903* (Cth) ('*Judiciary Act*') to prohibit publication of the names and images of her children.[40] The reliance on that section demonstrates that EF was not appealing from the Court of Appeal's decision, but rather was making a separate and distinct application to the High Court under different statutory provisions.[41] The confining of the issues also meant that Nettle J was not required to undertake any balancing of the competing considerations regarding the disclosure of EF's identity, for no application in respect of EF was before his Honour.

Section 77RE provides the High Court with a power very similar to that granted by s 17 of the *Open Courts Act 2013* (Vic). The similarities continue in s 77RF of the *Judiciary Act,* where the grounds on which the High Court may make such an order include where

> the order is necessary to protect the safety of any person.[42]

Not only did Nettle J face a similar test to the Court of Appeal, but his Honour faced '[s]ubstantially the same evidence'.[43] However, here we see the similarities end. The first of the differences, and the first in the steps that led Nettle J to a different conclusion than the Court of Appeal, was in the interpretation of 'necessary'. Much like the Court of Appeal, Nettle J considered that 'necessary' meant more than merely convenient, reasonable or sensible.[44] Yet his Honour went further and considered that 'necessary' in this context required

> satisfaction on the balance of probabilities that the order is necessary to protect the person's safety, the latter being a conclusion informed by the nature, imminence and degree of likelihood of apprehended harm.[45]

To his Honour's mind, an order would be necessary if, without it, 'the risk of prejudice to the safety of the person would range above the level that can reasonably be regarded as acceptable'.[46]

It was put to Nettle J that his Honour would face great difficulty in concluding that an order was necessary given the Court of Appeal's clear findings that it was not.[47]

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40 *AB (a pseudonym) v CD (a pseudonym)* (2019) 364 ALR 202, 203 [1] (Nettle J).

41 Ibid 204 [6].

42 *Judiciary Act 1903* (Cth) s 77RF(1)(c).

43 *AB (a pseudonym) v CD (a pseudonym)* (2019) 364 ALR 202, 203 [3] (Nettle J).

44 Ibid 205 [14].

45 Ibid.

46 Ibid 206 [15].

47 Ibid 206 [16].

Although his Honour dutifully expressed some hesitation in departing from those findings, he reasoned that there were 'compelling considerations' that justified doing so.[48] There are no surprises in what his Honour found compelling — the unchallenged opinion evidence of the senior police officers regarding the risk of harm; that the children were of 'relatively tender years'; and the evidence that disclosure would undermine the effectiveness of police protection.[49] Unlike the Court of Appeal, his Honour was not persuaded by the idea that those affected by EF's conduct could have easily ascertained her and her children's identities — certainly not to the extent that it would undermine the other considerations. His Honour also placed greater weight on the lack of any public interest in disclosure of the children's identities, and the lack of opposition by the other parties to the order.[50]

Justice Nettle was therefore satisfied that it was necessary to make the order to protect the safety of the children. On balance, his Honour considered that a period of 15 years was appropriate.[51]

III Departure

A *Unless Plainly Wrong*

It is no accident that the provisions of the *Open Courts Act 2013* (Vic) and the *Judiciary Act 1903* (Cth) are so similar. In 2010, the Standing Committee of Attorneys-General developed model legislation on suppression orders to ensure uniformity of decision-making across Australia.[52] That uniformity invites consideration of *ASC v Marlborough Gold Mines* ('*Marlborough Gold Mines*'), where the unanimous High Court emphasised the importance of consistent interpretation of uniform legislation.[53] Indeed, the High Court's remarks have since been applied in the context of the suppression order regime.[54]

As the Court of Appeal and Nettle J reached starkly different conclusions, the question arises whether there is a uniform line of interpretation on orders necessary to protect the safety of persons and, if so, whether either decision was consistent with those authorities.

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48 Ibid.

49 Ibid 206–7 [17]–[20].

50 This is with the exception of The Age, which made strong submissions against EF's application: ibid 207 [20] (Nettle J).

51 Ibid 207 [21].

52 See Explanatory Memorandum, Access to Justice (Federal Jurisdiction) Amendment Bill 2011 (Cth) 2.

53 *Australian Securities Commission v Marlborough Gold Mines Ltd* (1993) 177 CLR 485, 492.

54 See, eg, *Roberts-Smith v Fairfax Media Publications Pty Ltd* [2018] FCA 1943, [28]–[29] (Bromwich J).

As is too often the way in a common law system, the courts have identified two competing approaches to determining what is 'necessary'. The first, termed the 'probable harm' approach, requires the applicant to demonstrate that it would be more probable than not, absent the order, that the relevant person would suffer harm.[55] We can see that such an approach requires the probability of harm to be established as a *precondition* to the grant of the order. Conversely, the 'calculus of risk' approach invites consideration of the nature, the imminence and degree of likelihood of the harm.[56] Under this approach, if the nature of the harm is severe (for example, death), then an order may be necessary even if there is only a mere possibility of the harm arising.

The latter approach is no doubt preferable given that the former is liable to produce anomalous results.[57] Justice Besanko gave an example:

> It would seem incongruous to have a test which founds an order where it is probable an assault will occur, but not in a case where there is a 49% risk of a death occurring.[58]

Justice Nettle clearly preferred and applied the 'calculus of risk' approach.[59] Had the Court of Appeal done the same, it is difficult to see how their Honours could have arrived at the conclusion that they did. Instead, their Honours implicitly adopted the 'probable harm' approach by giving little weight to the unchallenged police evidence that the risk of death to EF was 'almost certain'.[60] Evidently such an approach fails to consider the *nature* of the harm that would have befallen the children, namely, the risk of death. More importantly, the approach signals a departure from the reasoned decisions of other intermediate appellate and first instance courts in a manner contrary to *Marlborough Gold Mines*.

But the effects of ignoring the High Court's plea for consistency and uniformity are not merely confined to the theory. The dangers of not heeding their Honours' warning are tangibly illustrated by the divergence in approach between the Court of Appeal and Nettle J. Here, on largely the same evidence, the two Courts have arrived

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55 *AB (a pseudonym) v The Queen [No 3]* [2019] NSWCCA 46, [56] (Hoeben CJ at CL, Price and Adamson JJ); *D1 v P1* [2012] NSWCA 314, [49] (Bathurst CJ).

56 *AB (a pseudonym) v The Queen [No 3]* [2019] NSWCCA 46, [56]; *D1 v P1* [2012] NSWCA 314, [51] (Bathurst CJ).

57 The 'calculus of risk' approach has been adopted in *Hamzy v The Queen* [2013] NSWCCA 156, [60] (Harrison J, with whom Beech-Jones J agreed); *Roberts-Smith v Fairfax Media Publications Pty Ltd* [2019] FCA 36, [17] (Besanko J). The following decisions, handed down after the Court of Appeal's judgment, have also adopted the 'calculus of risk' approach: *AB (a pseudonym) v The Queen [No 3]* [2019] NSWCCA 46, [58]; *Brown (a pseudonym) v The Queen [No 2]* [2019] NSWCCA 69, [37]–[38] (Payne JA, Johnson and N Adams JJ).

58 *Roberts-Smith v Fairfax Media Publications Pty Ltd* [2019] FCA 36, [17] (Besanko J).

59 *AB (a pseudonym) v CD (a pseudonym)* (2019) 364 ALR 202, 205 [14] (Nettle J).

60 *AB v CD* [2019] VSCA 28, [75] (Ferguson CJ, Beach and McLeish JJA).

at completely opposing conclusions. The immediate problem emerges in the application of *stare decisis* — which decision should be followed? As a later Court of Appeal has already acknowledged, Nettle J's decision as a single judge is not binding.[61] In Victoria, any court — barring the Court of Appeal — will be bound by the Court of Appeal's decision to refuse the applications. For the Victorian courts, therefore, the way forward is simple — follow the decision of the Court of Appeal. By contrast, one cannot help but feel sympathetic towards a judge of another jurisdiction forced to decide between following Nettle J in the High Court, or the unanimous Court of Appeal.

B *Keen Revelations*

The above analysis views the two decisions through a legal lens. However, there is little utility in examining the legal aspects of the case divorced from the people involved, as the law is only relevant in the context of its humanity.

That brings us to the focal point of both decisions — the protection of children. The special place of children under the law has long been recognised. Their welfare is the 'dominant matter',[62] the 'first and paramount consideration',[63] a consideration that has evolved into an 'important and salutary principle of substantive law'.[64] On the justification for those principles, I can do no better than quote Bell J:

> Children are ends in themselves and not the means of others. They form part of the family, the fundamental group unit of society. Children bear rights personally, and are entitled to respect of their individual human dignity. The views of children should be given proper consideration in relation to matters affecting them. Children are especially entitled to protection from harm, and to human development.[65]

The paramountcy of the protection and welfare of children may necessitate, in situations where children are especially vulnerable, the suppression of their identities. The situations in which Parliament has required suppression are hardly surprising

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61 *AB v CD [No 2]* [2019] VSCA 95, [12] (Ferguson CJ, Beach and McLeish JJA). See also *Businessworld Computers Pty Ltd v Australian Telecommunications Commission* (1988) 82 ALR 499, 504 (Gummow J); *MMAL Rentals Pty Ltd v Bruning* (2004) 63 NSWLR 167, 184 [94] (Spigelman CJ, with whom Mason P and Hodgson JA agreed).

62 *In re McGrath (Infants)* [1893] 1 Ch 143, 148 (Lindley LJ).

63 *In re Adoption Application 41/61* [1963] Ch 315, 329 (Danckwerts LJ, with whom Ormerod LJ agreed).

64 *Northern Territory v GPAO* (1999) 196 CLR 553, 584 [65] (Gleeson CJ and Gummow J).

65 *Secretary to the Department of Human Services v Sanding* (2011) 36 VR 221, 227 [11] (Bell J).

and include: where a child's safety requires protection or removal;[66] where a child is charged and tried for a criminal offence;[67] and where a child is in the care of the State or Territory.[68]

By the above I seek to emphasise two points: that the courts appropriately place the welfare of children as the paramount consideration; and that statutory suppression of children's identities is a common occurrence. Yet, amidst that background, none of which can be said to be particularly novel, the Court of Appeal failed to accord paramountcy to the welfare of EF's children. Their Honours failed to suppress the children's identities in the way that courts across the country have done time and again. The risk of harm to the children was not afforded any separate consideration beyond that incidental to the risk to EF herself. By approaching the issue in that way, their Honours flipped Bell J's declaration on its head and treated the children not as an end in themselves, but as the means of EF.

IV A Troubling Dichotomy

I remarked above that we all hold a basic assumption that society will protect its children as a paramount consideration. In a number of ways, it appears that the Court of Appeal failed to give the safety of EF's children that paramountcy — a failure rendered even more stark by Nettle J's efforts to do just that. The inherent conflict between the two decisions raises a number of legal issues in the granting of suppression orders. But more than that, if we take Mandela's view, they offer keen revelations of how the courts will treat our children.

66 See, eg, *Criminal Code 2002* (ACT) s 712A(1); *Family Violence Act 2016* (ACT) s 149(1); *Care and Protection of Children Act 2007* (NT) s 97; *Child Protection Act 1999* (Qld) ss 189, 193–4; *Children and Young People (Safety) Act 2017* (SA) s 162.

67 See, eg, *Criminal Code 2002* (ACT) s 712A(1); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 105(1); *Youth Justice Act 2005* (NT) ss 43(2)–(3), 50(1); *Youth Justice Act 1992* (Qld) s 301(1); *Young Offenders Act 1993* (SA) ss 13(1), 63C(1); *Youth Justice Act 1997* (Tas) ss 31, 108; *Children, Youth and Families Act 2005* (Vic) s 534(1); *Children's Court of Western Australia Act 1988* (WA) ss 35–6.

68 See, eg, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 105(1AA).