



Opening up about suppression orders and non-publication orders

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Often sought but rarely given, suppression orders are the only things stopping the public from getting access to your court or tribunal matters. A court or tribunal can shut its doors to prying eyes, but only if it finds it necessary. And convincing them to do so is no easy feat.

Although this article will focus on suppression orders, a closely linked court order is non-publication orders. The general principles are the same as those for suppression orders.

What are non-publication orders?

Non-publication orders prohibit the publication of information that has been disclosed in open court to persons outside the court. This means that information disclosed in open court must not be disseminated or published to the public. The purpose of the orders is generally to protect identities and confidential information from being published so as to safeguard that information.

What is a suppression order?

A suppression order stops information and documents that you and others give to the court or tribunal, and that they give to you, from getting to the public. There are, broadly speaking, three types of suppression orders.

Suppression orders preventing the public from accessing documents

The first type of suppression order is an order stopping the public from accessing and obtaining documents that are before the court. It may seem surprising, but anyone can ask a court or tribunal for any documents they have, and the court or tribunal can provide those documents. This particular type of suppression order, however, stops them from doing so.

Suppression orders anonymising people and places

The second type of suppression order is an order anonymising people and places. These orders can give a person or place a pseudonym in decisions released to the public or redact the names of the persons or places in court documents. Such orders seek to stop the public from identifying what the matter is about.

Suppression orders barring people from attending court

The third type of suppression order is an order barring people from attending court listings. You may, at some point, have to go to court or a tribunal for a matter (such as a trial, hearing and/or mention). Ordinarily, and with the exception of certain matters, members of the public can sit in the gallery at the back of the courtroom and watch the matter.

Onlookers, however, will be prevented from doing so if the court or tribunal makes an order preventing members of the public from entering the court or tribunal.

Why you may need a suppression order

During court or tribunal proceedings, details about a person's private life and personal information may be examined. To the person whose privacy is exposed, it can feel little like justice, and more like torture.

This is, unfortunately, a byproduct of our legal system. Courts and tribunals pride themselves on their openness; they see it as one of our legal system's cornerstones. Privacy generally comes second to the need for what courts call the "principle of open justice".

Suppression orders, however, give a person a way for their privacy to come first.

How to get a suppression order?

The exact questions a court or tribunal will ask when someone seeks a suppression order will depend on which court is hearing the matter. Generally, some variation of the following three questions will be asked:

1. What enables the court or tribunal to make a suppression order?
2. What exactly does a person want suppressed?
3. Why should the suppression order be made?

What enables the court or tribunal to make a suppression order?

This question has at least as many answers as there are courts and tribunals. This is because courts and tribunals can only suppress things if they have the power to do so.

Most courts give themselves the power to give a suppression order. However, legislation can also give courts the power to give a suppression order. Legislation gives them this power in two ways: in a broad way and in a narrow way.

Legislation can give a court a broad power to do what they need to do to function properly. These courts can use this broad power to make suppression orders. Alternatively, legislation can give them a narrow power to specifically give suppression orders.

Most tribunals, however, cannot give themselves powers. Only legislation can give them powers. Legislation gives tribunals these powers in the same two ways as legislation gives the courts their powers.

It's important, then, to point the court or tribunal to legislation that enables them to make a suppression order.

What exactly does the person want suppressed?

If the person is seeking to have documents withheld from the public, the person needs to point out which specific documents they want suppressed. If they want names or places anonymised, they will need to tell the court or tribunal what names and places they want anonymised. And if they want the courtroom to be closed, they will need to ask for this and provide reasons for such a request.

It is key, therefore, for a person seeking a suppression order to clearly articulate what order the person is seeking and why.

Why should the suppression order be made?

There are some situations where the court or tribunal must suppress information. For instance, courts and tribunals generally cannot publish information that identifies a child who has been the victim of an offence.

But absent a rule like that – and there are only a few of them – the court or tribunal does not have to grant a suppression order. So, a person seeking such an order needs to persuade the court or tribunal otherwise.

Generally, a person won't successfully persuade the court or tribunal of the need for a suppression order if the person's reason for such an order is that the information will be embarrassing if it becomes public. Courts and tribunals often take the position that embarrassment is a part of litigation. Ultimately, the court or tribunal will want a better reason.

That "better reason" is often harm. The court or tribunal will likely be persuaded to grant a suppression order if someone or something would be harmed if they didn't grant it.

There could be harm, for example, to a victim of stalking if information as to where they live or work is released to the public. Or there could be harm to a company if a trade secret were examined publicly in a courtroom. There could also be harm if naming someone in a decision would cause them to suffer mental health issues.

These are just some examples, and the nature of the harm will turn on the situation a person is in. It is necessary to think: how could someone or something be harmed if I don't get the suppression order?

Getting help with suppression orders

Suppression orders can be tricky, and there's often a lot at stake. Getting it wrong can lead to private information becoming public. If you're seeking a suppression order, getting legal advice and assistance will optimise the potential to succeed.

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