**PAPER**

**Non-Publication of Name and Identifying Information**

**An exception by Order of the Children’s Court**

**A Case Summary**

**Children’s Magistrate Crawford**

**August 2006**

The Children and Young Persons (Care and Protection) Act l998 (‘the Act’), (section 105), prohibits publication or broadcasting of the name of a child/young person the subject of care proceedings, or is involved in such proceedings as a witness or otherwise. The prohibition extends also where proceedings are reasonably likely. The “name” of a child/young person includes any information picture or material (a) that identifies the child and (b) that is likely to lead to the identification of the child.

An exception is made to this prohibition if such prohibition or broadcasting occurs with the consent of the Children’s Court (section 105(2)).

An application was brought on behalf of the Director-General to the Children’s Court at Lidcombe on the afternoon of 2l February 2006 seeking an order authorising release to the media for broadcasting the name and other identifying information concerning the child ‘Arthur’, such identifying information to include the name and photograph of ‘‘Arthur’s” mother.

The application is not an application for a care order (see section 60). Such proceedings are governed by Chapter 6 of the Act, however, it is unclear whether the legislation contemplates there being a respondent to the application, at least before any care proceedings are instituted. In any event it was in the nature of the circumstances giving rise to the application that no copy of the application could be served on the mother or child.

On the application the case officer was called to give oral testimony (given the urgency, affidavit evidence was not insisted upon). The child had been recently born and while concerns about the child’s care were raised while the child was in hospital, the child’s care was not assumed, the child and mother left hospital with anticipated follow up and support. The whereabouts of the mother and child became immediately unknown. The mother was seen affected by drugs – on occasions with the child and on others without the child. It was unknown who was caring for the child when the mother was not available. An additional concern was that the mother had not established a feeding regime with the child before leaving hospital.

Reports (including the day preceding the making of the application and noting a deterioration in the child’s state of health) were received that were unable to be investigated unless the mother’s whereabouts could be ascertained. The evidence pointed to the urgency of the situation. It was anticipated that a care and protection application would be filed once the child’s whereabouts known.

The Act requires the Court to make a determination balancing competing interests – the interest in maintaining the privacy of the child and family and protecting the child from notoriety while authorities carry out an investigation of the reports. This interest is to be weighed against that of protecting the child from risk of serious harm by enlisting the assistance of the wider community in locating the child where conventional sources (family and friends etc.) have not been able to provide such information to authorities. Other considerations may arise where proceedings have been instituted. However, in this situation section 105(2) appears to be principally tied to the public duty of the Director-General to make an investigation of and assessment following upon a report. After considering the evidence the court ordered that the name “Arthur” be published or broadcast including a reference to information, picture and material likely to lead to the identification of the child. (ie picture, information and material relating to the mother.)

*Postscript*

A short article appeared in the Daily Telegraph on 22 February 2006 naming the mother with her photograph, referring to, but not naming, the child. The mother and child were located on 24 February 2006. Next to a mattress in a room of premise where each was sleeping was located a copy of the Daily Telegraph of 22 February 2006. The child was transported to hospital due to concerns about his loss of weight and was discharged on 27 February 2006. A care application was filed on that date.