

**SUPREME COURT OF VICTORIA
COURT OF APPEAL**

S EAPCI 2026 0055

XY (a pseudonym)

First Applicant

Z (a pseudonym)

Second Applicant

v

INDEPENDENT BROAD-BASED ANTI-CORRUPTION
COMMISSION

Respondent

JUDGES:	NIALL CJ, BEACH JA and GRAY AJA
WHERE HELD:	Melbourne
DATE OF HEARING:	11 June 2026
DATE OF JUDGMENT:	12 June 2026
MEDIUM NEUTRAL CITATION:	[2026] VSCA 139
JUDGMENT APPEALED FROM:	[2026] VSC 299 (Harris J)

OPEN COURTS – Pseudonym order – Proceedings seeking judicial review of Independent Broad-based Anti-corruption Commission report – Where primary judge refused application to prosecute proceeding using pseudonym – Pseudonym order not necessary to avoid prejudice to administration of justice – Court’s inherent jurisdiction – Leave to appeal refused.

Independent Broad-based Anti-corruption Commission Act 2011, ss 162, 166.

ABC v D1; Ex parte The Herald & Weekly Times Ltd [2007] VSC 480, applied; *PQR v Secretary, Department of Justice and Regulation [No 1]* (2017) 53 VR 45; *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170; *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2015) 258 CLR 1; *Secretary, Department of Justice and Regulation v Zhong [No 2]* [2017] VSCA 19, referred to.

APPEALS – Appeal against refusal to make pseudonym order – Standard of appellate review – Decision whether to make pseudonym order involved exercise of discretion – Principles established in *House v The King* apply.

House v The King (1936) 55 CLR 499, applied; *WEQ v Medical Board of Australia* [2025] VSCA 100; *Chaarani v DPP* [2018] VSCA 299; *Helensburgh Coal Pty Ltd v Bartley* (2025) 424 ALR 1, referred to.

Counsel

Applicants: Mr OP Holdenson KC with Ms P Banerjee
Respondent: Mr G Ayres with Ms A Lloyd

Solicitors

Applicants: Slater & Gordon
Respondent: IBAC Legal Operations

- 1 The applicants seek leave to appeal from an interlocutory decision of a judge in the Trial Division refusing an application to permit them to prosecute the proceeding using a pseudonym. That application must be refused for the reasons that follow.

Background

- 2 The applicants have commenced a proceeding in the Trial Division seeking judicial review of a report of the Independent Broad-based Anti-corruption Commission ('IBAC') (the 'report') relating to an investigation under the *Independent Broad-based Anti-corruption Commission Act 2011* ('IBAC Act'). The applicants have been advised by IBAC that it intends to transmit to Parliament its report pursuant to s 162 of the IBAC Act. Amongst other relief, the applicants seek an injunction preventing that from occurring.
- 3 The judicial review proceedings have been listed for trial on an expedited basis and will be heard on 24 June 2026. Pending trial, IBAC has given an undertaking to the Court that it will not transmit the report until the completion of the proceeding. In preparation for trial the judge made:
 - (a) confidentiality orders including that the Court file and all documents on it are to remain confidential and no person may inspect or obtain a copy of any documents on the court file or part of the file without further order, pursuant to r 28.05(4) of the *Supreme Court (General Civil Procedure) Rules 2025*; and
 - (b) an order that the whole of the proceeding be heard in closed court under s 30(1) of the *Open Courts Act 2013*.
- 4 Those orders must be seen in the context of s 166 of the IBAC Act. That section provides:

166 Persons who receive reports or information prior to publication

- (1) Subject to subsections (3), (4) and (5), a person who receives a proposed report, an advance copy of a report under section 162A, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, before the report is published by the IBAC in accordance with section 162 or 165 must not disclose any information contained in the proposed report or draft or part of the proposed report unless—
 - (a) the disclosure is permitted under subsection (2); and
 - (b) the advice required by subsection (6) is given at the same time the disclosure is made.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) For the purposes of subsection (1), a disclosure is permitted if the disclosure—
- (a) is made in accordance with a direction or authorisation given by the IBAC; or
 - (b) is made by an officer of an entity to other officers of the entity for the purposes of enabling the entity to respond to the proposed report or draft or part of the proposed report; or
 - (c) subject to section 127(2) and (8), is made for the purposes of obtaining legal advice or representation in relation to the proposed report or draft or part of the proposed report; or
 - (ca) is made by the Secretary to the Department of Premier and Cabinet to relevant officers of the Department of Premier and Cabinet for the purpose of enabling the Premier or the responsible Minister to respond to the report; or
 - (d) is otherwise authorised or required to be made by or under this Act.

...

- 5 As already foreshadowed, the applicants also sought orders that they be identified by pseudonym in the proceeding.

The evidence before the judge

- 6 In the hearing before the primary judge, the applicants relied on an affidavit of Geoffrey Borenstein, a lawyer employed by their solicitors, which had been filed in support of the substantive application seeking to injunct the transmission of the report to the Victorian Parliament. Mr Borenstein’s affidavit referred to instructions he had received from the first applicant to the effect that, among other things, the first applicant believes that the transmission of the report to Parliament by IBAC would be likely to attract significant media attention that would materially damage his reputation.¹
- 7 IBAC relied on an affidavit affirmed by Cameron Warfe, its Director of Legal Operations. Mr Warfe’s affidavit confirmed IBAC’s intention to transmit the report to Parliament. The affidavit also referred to reports published in the media in around May 2026 which, among other things, referred to court proceedings ‘delaying the publication of the report’.²

The judge’s reasons

- 8 After referring to the evidence, the judge set out the principles relating to the making of pseudonym orders in this Court.

¹ *XY v Independent Broad-based Anti-corruption Commission* [2026] VSC 299, [12] (Harris J) (Reasons).

² Reasons, [16].

- 9 The judge noted that the Court may make pseudonym orders in the exercise of its inherent powers where it is necessary to avoid prejudice to the administration of justice. The judge observed that the application was not governed by the *Open Courts Act 2013*, noting that such an order did not prohibit or restrict the publication or other disclosure of information in connection with the proceeding, and that s 7(d)(i) of that Act specifically provides that it does not limit or otherwise affect ‘the making of an order or decision by a court or tribunal that ... conceals the identity of a person by restricting the way the person is referred to in open court’.³
- 10 The judge referred to⁴ and applied the following principles propounded by J Forrest J in *ABC v DI*; *Ex parte The Herald & Weekly Times Ltd*:⁵

First, that the principal rule is that judicial hearings should take place in open court: publicly and in open view, with no restriction on reporting. This is a fundamental precept underpinning the administration of justice.

Second, that in certain circumstances the administration of justice requires a qualification of the general rule. There will be circumstances where modifications of the general rule are necessarily made to ensure that the administration of justice is not frustrated. These exceptions are many and varied and cannot be prescriptively identified.

Third, that the test to be applied by the court in making a pseudonym order is ... whether it is necessary to do so in order not to prejudice the administration of justice.

Fourth, that a court, in determining whether to make a pseudonym order, is entitled to take into account the individual considerations affecting the person seeking the order and balance those against the principal rule of open justice in determining whether the administration of justice warrants the making of the order. Relevant to these individual considerations is whether there is a real risk of the party or witness suffering psychological harm as a result of publication of his or her name or the names of other parties. Also relevant is the real risk of a party not proceeding with an action in the event that he or she or another person is identified.

...

Seventh, in determining whether it is necessary to make such an order, usually the proofs must be cogent and will not be satisfied by mere belief on the part of a party that the order is necessary. However, in certain cases a court can, in a practical sense, act on its own experience and draw appropriate inferences.⁶

- 11 Having regard to the various matters that were already in the public domain, the judge did not accept that the making of pseudonym orders would provide any material degree of protection for the applicants from the risk of speculation and adverse inferences being drawn from their commencement of this proceeding.⁷ The judge did not accept that any

³ Reasons, [20].

⁴ Reasons, [21].

⁵ [2007] VSC 480 (*‘ABC v DI’*).

⁶ *ABC v DI* [2007] VSC 480 [65]–[71].

⁷ Reasons, [26]–[29].

speculation that might arise as a result of the applicants being named as the parties to the proceeding would necessarily lead to any adverse consequences for the first applicant in the way that the applicant claimed, and did not accept that there was sufficient evidence of any material risk of the harms claimed.⁸

- 12 The judge noted that in a number of proceedings involving IBAC investigations or reports in this Court, pseudonyms had been used. The judge distinguished those cases, observing:

However I consider that there is a relevant differentiating factor in the present case, primarily that there is a significant amount of information in the public domain about Operation Richmond, its general subject matter, the intention to publish the special report, and now the bringing of proceedings to restrain the transmission of the report to Parliament. This has already given rise to significant speculation as to who the plaintiffs are. That speculation is undesirable for the plaintiffs. It is, however, also undesirable for other parties who may be thought to be the subject of comment in the report, and may be thought to be seeking to restrain publication because of adverse comment made about them in the report.⁹

Submissions

- 13 The applicants seek leave to appeal on the basis that the judge erred in failing to determine that the pseudonym orders were necessary to avoid prejudice to the administration of justice (**ground seven**). This error is said to arise from the judge's findings that:
- (a) the pseudonym orders would not have provided the applicants with any material protection from speculation or adverse inferences (**grounds one and two**);
 - (b) any media or public speculation would not necessarily lead to adverse consequences for the applicants in the ways that had been claimed in the evidence (**ground three**);
 - (c) the applicants had not discharged their onus in establishing that a pseudonym order should be made (**ground four**);
 - (d) the making of the pseudonym orders may make the conduct of the proceeding 'more difficult' because the disclosure of any information capable of identifying the applicants may constitute a contempt of Court (**ground five**); and
 - (e) the proceeding would not be stultified if the pseudonym order were not made because there was no evidence or submission that the applicants would not pursue the application in such circumstances (**ground six**).
- 14 In short, the grounds of appeal raise the central question of whether the judge was correct to find that a pseudonym order was not necessary to avoid prejudice to the administration of justice, on the basis that the applicants had failed to establish that such

⁸ Reasons, [30].

⁹ Reasons, [35].

orders would reduce, lessen or otherwise provide any material degree of protection to the applicants from speculation or adverse inference.

- 15 In oral submissions, senior counsel for the applicants submitted that in the context of s 166 of the IBAC Act, naming the applicants would expose them to irreparable harm. He submitted that having brought an action to quash a report of IBAC and prevent it from being transmitted to Parliament, people will speculate both as to the identity of the applicants but also that the applicants must be the subject of an adverse or critical report. If they succeed at trial and the report is quashed, the report would not see the light of day but the speculation as to its contents would continue and the applicants would, by s 166, be prevented from referring to any positive aspects of the report or clarifying what was or was not found by IBAC in its report. He drew particular attention to what was described in the written case as the ‘general adverse consequences’ which meant that even if they were successful they would be affected by a stain on their reputations that they could not seek to correct, contextualise or explain. It was submitted that the judge did not take these matters into account.

Decision

- 16 In approaching the current application three matters of principle are relevant. First, as the decision of the judge involved the exercise of a discretion, error of the kind in *House v The King*¹⁰ must be established.¹¹ The choice of the kinds of orders that should be made to preserve confidentiality so as to protect the process of the Court involves a discretion and does not admit of a single legally correct answer. And even if the question here were properly to be seen as reduced to one that demanded a unique outcome (whether or not to grant pseudonyms), appellate restraint would still be appropriate.¹²
- 17 Second, in interlocutory appeals (particularly on matters of practice and procedure) there is a stringent requirement that the applicant show substantial injustice if the decision is allowed to stand. This reflects the principle that a ‘tight rein’ should be applied when granting leave in matters of practice and procedure.¹³
- 18 The third matter relates to the power of this Court to make a pseudonym order. Although to say the Court has a power to make such an order is not inaccurate, describing the power in that way risks overlooking its true source and character. As the judge explained, that power is not statutory but arises as an incident of the inherent jurisdiction or inherent powers of the Court.¹⁴ The Court does not have an inherent

¹⁰ (1936) 55 CLR 499; [1936] HCA 40.

¹¹ *WEQ v Medical Board of Australia* [2025] VSCA 100, [11], [16]–[17] (Walker JA); *Chaarani v DPP (Cth)* [2018] VSCA 299, [36]–[38] (Maxwell P, Beach and Hargrave JJA).

¹² See *Helensburgh Coal Pty Ltd v Bartley* (2025) 424 ALR 1, 18–9 [79] (Edelman J); [2025] HCA 29.

¹³ *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170, 177 (Gibbs CJ, Aickin, Wilson and Brennan JJ); [1981] HCA 39, quoting *Re Will of F B Gilbert (Dec)* (1946) 46 SR (NSW) 318, 323 (Jordan CJ, Maxwell J agreeing at 325, Nicholas CJ in Eq agreeing at 327). See also *Warburton Environment Inc v VicForests* [2021] VSCA 194, [112] (Niall, Emerton and Kennedy JJA); *Niemann v Electronic Industries Ltd* [1978] VR 431, 441–2 (Murphy J); *Drummond v Canberra Institute of Technology* (2020) 278 FCR 436, 438 [5]–[6]; [2020] FCAFC 131 (Flick, Katzmann and Charlesworth JJ).

¹⁴ *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2015) 258 CLR 1, 17 [37] (French CJ, Kiefel, Bell, Gageler and Gordon JJ); [2015] HCA 36 (citations omitted) (*‘PT Bayan’*).

power to protect the reputation of parties nor to ameliorate the inevitable consequences that flow from having proceedings in open court as ends in themselves. Mere embarrassment, distress or invasion of privacy is insufficient to warrant the making of a pseudonym order.¹⁵

- 19 Rather, the inherent powers are those powers that are *necessary* for the administration of justice and the proper exercise of the court’s jurisdiction. It includes the power to make such orders as that Court may determine to be appropriate ‘to prevent the abuse or frustration of its process in relation to matters coming within its jurisdiction’.¹⁶ Injury to the interests of a party or non-party may be related to an interference with the administration of justice but they remain conceptually distinct.

Have the applicants established that the pseudonym order is necessary to avoid prejudice to the administration of justice (grounds four and seven)?

- 20 If the order is not made the identity of the applicants will be known. Essentially, the applicants submit that third parties might assume that the applicants are guilty of some wrong doing or might shun or avoid the applicants on the basis that they are the subject of an adverse report by IBAC.
- 21 Importantly, the refusal of the order will not, as the judge found, stultify the proceeding (the applicants’ arguments on this point are addressed below). Nor will it render any relief nugatory. The applicants do not contend that the proceeding, or their ability to conduct it, would be frustrated by a refusal to make an order or that the order is necessary to preserve the subject matter of the proceeding. They submit that they will be harmed if they bring the proceedings in their own names. The harm that the applicants identify is that their reputation will be harmed by speculation that they are the subject of adverse findings by IBAC.
- 22 In our opinion, in the context of this proceeding, that harm does not equate to, nor cause, prejudice to the administration of justice. It is not enough for the applicants to say that they will be better off if the pseudonym order is made. They have to establish the real likelihood of an injury or harm to the administration of justice and the effective exercise of the court’s jurisdiction to review the lawfulness of the report. They fail completely in that endeavour. For that reason alone the circumstances do not engage the inherent powers of the court.

Did the judge err in finding that pseudonym orders would not reduce, lessen, or provide any material degree of protection from speculation, or that the failure to make the orders would not lead to adverse consequences for the applicants (grounds one, two and three)?

- 23 Moreover, we detect no error in the judge’s conclusion that the applicants had not established the potential adverse consequences contended for. The judge concluded that

¹⁵ *Secretary, Department of Justice and Regulation v Zhong [No 2]* [2017] VSCA 19, [8]–[9] (Santamaria, Ferguson and McLeish JJA); *John Fairfax Group v Local Court of NSW* (1991) 26 NSWLR 131, 142–3 (Kirby P).

¹⁶ *PT Bayan* (2015) 258 CLR 1, 19 [43] (French CJ, Kiefel, Bell, Gageler and Gordon JJ); [2015] HCA 36, citing *Jackson v Sterling Industries Ltd* (1987) 162 CLR 612, 623 (Deane J).

the applicants are already the subject of speculation in the context of the report and that being identified as the applicants would not materially lessen the nature or extent of that speculation.¹⁷ That finding accorded with the evidence and did not betray any misunderstanding as to the nature of the harm.

- 24 The evidence of prejudice is contained in two paragraphs of the affidavit of the solicitor for the applicants given on the basis of information and belief. Two matters are of significance. First, the identified harm is predicated on the contents of the report being revealed. As already noted, the report is to remain confidential both by order of the Court and by operation of s 166 of the IBAC Act. That significantly dilutes the impact of the evidence because it proceeds on a different premise. Second, the evidence goes to how people might be expected to behave towards the applicants if their identities were revealed. That evidence is entirely speculative in nature and the judge was correct to find it insufficient to establish any material risk of the harms claimed.
- 25 Contrary to the submissions of the applicant on ground three, the observation of the judge that speculation as to what might be contained in the report would not ‘necessarily lead to any adverse consequences’ for the applicants involved a comment on the evidence rather than positing or reflecting a legal test. Read fairly, the judge correctly applied the legal principles which she had earlier set out in her reasons.
- 26 It is also relevant to note that the existence of the pseudonym order would invite continuing speculation as to the identity of the applicants. If the pseudonym order is made that speculation will continue in a context where the public will know that the proceeding involves a report by IBAC on a matter of public importance. In itself that has the capacity to undermine confidence in the Court. In a context where much of the contents of the proceeding must remain secret, the Court must be astute to minimise the intrusion into the open court principle to the extent that is truly necessary.
- 27 The applicants’ submission that the judge failed to distinguish between speculation about the identities of applicants and speculation about contents of report is rejected. The judge understood the applicants’ contention: that without pseudonyms speculation will end about their identities, which will be known, making their position (due to speculation about the contents of the report) materially worse. That contention was very weak and her Honour rightly rejected it.¹⁸ It is plain from the reasons that the judge appreciated that there was existing public speculation about the identity of persons who might be the subject of adverse findings in the report.
- 28 In our view, given that the contents of the report are not presently known, whether or not the public will speculate as to its contents provides no basis for a pseudonym order. This is not a case where any actual allegations or findings of wrong doing would enter the public domain if the order is refused and which might irremediably harm the applicants even if ultimately the report is found to be beyond power. Success in the proceeding would vindicate the applicants to the extent that they will have established

¹⁷ Reasons, [24]–[29].

¹⁸ Reasons, [13], [23]–[25], [29]. On a fair reading of the reasons, the second reference to ‘speculation’ in [24] and the references to speculation and the drawing of adverse inferences or conclusions in [25] and [29] were clearly about the contents of the report, not the identities of the applicants.

that the report is tainted by relevant legal error and the Court will have enjoined its transmission.

- 29 The fact that s 166 of the IBAC Act might prevent the applicants from picking out those parts of the report that they would not object to being in the public domain does not render this case exceptional in any meaningful way. The underlying harm complained of is harm to the reputation of the applicants in the event they are identified as the applicants. Even assuming that s 166 has some residual effect including upon an invalid report (a question that we do not need to determine) that does not mean that the processes of this Court are curtailed, limited or adversely affected. The relevant jurisdiction of this Court is to determine conclusively the lawfulness and legal effect of the report. Success on a ground of jurisdictional error would enable the Court to quash the report so as to expunge its legal effect. That does not mean that the Court can or should seek to avoid every practical or other effect that might arise by reason of an impugned decision of the executive branch. And of course, if the applicants considered the contents of the report to be favourable then they need not bring the proceeding. That may be an invidious choice but not one which justifies the step of anonymising the proceeding.
- 30 The step of coming to Court to quash or restrain the publication of a report is a public demonstration of the applicants' allegation that the report is unlawful or made beyond power. If the applicants' identities are revealed, the public will know that the applicants have put the validity of the report in issue and have invoked the Court's responsibility to determine the lawfulness or validity of the report according to law. While the judicial process is ongoing, the contents of the report will not be publicly known as a result of s 166 of the IBAC Act and confidentiality orders in relation to the Court file. If necessary, the Court may be closed for parts of the hearing.
- 31 Fundamentally, the applicants will have the full legal benefit of any relief that they are able to obtain even if they are named as the parties to the proceeding.
- 32 Even if the applicants are worse off without a pseudonym order, the speculative nature of the harm that would follow a refusal of the order must be seen in the context of the cardinal rule that 'judicial hearings should take place in open court: publicly and in open view, with no restriction on reporting'.¹⁹ When the potential harm is placed in the context of an open and transparent judicial process, it is plain that the orders are not justified.
- Did the judge err in taking into account that breach of the pseudonym orders (if made) could make the conduct of the proceeding 'more difficult' (ground five)?*
- 33 In declining to make the pseudonym orders, the judge took into account that the making of the orders may 'make the conduct of the proceeding more difficult' because any disclosure of information capable of identifying the applicants could 'potentially

¹⁹ *ABC v DI* [2007] VSC 480, [65] (J Forrest J).

constitute a contempt of Court'.²⁰ This was one of the three matters the judge described as 'relevant, but of less significant importance'.²¹

- 34 In our view there was no error by the judge in considering this point. As we have observed, it is a cardinal rule of judicial proceedings that justice be administered in open court, where 'the names of parties are openly revealed and may be the subject of fair and accurate reports without fear of prosecution for contempt or action for defamation or other civil wrong'.²² There was no error in the judge having regard to this 'fundamental precept underpinning the administration of justice' as a secondary, but relevant consideration.²³
- 35 Even if the judge had erred in this respect, we would not treat it as a vitiating error for two reasons. First, read fairly the matter was a minor additional matter in the mix. Second, the fact that breach of an order may amount to a contempt amplifies the seriousness of taking the step of allowing a party to proceed using a pseudonym and justifies caution in making it and to that extent was a relevant factor to take into account. The more serious the step which would infringe open court principles, the more stringent the requirement to prove that the step is 'necessary' to avoid a risk of prejudice to the administration of justice.

Did the judge err in holding that the proceeding would not be stultified only because there was no evidence or submissions that the plaintiffs would not pursue their application if the pseudonym orders were not made (ground six)?

- 36 The applicants do not contest the finding of the judge that there was no suggestion by the applicants in evidence or submissions that they would not pursue the proceeding if the pseudonym orders were not granted. Moreover, this finding was plainly correct. Accordingly, this ground must fail: the proceeding would not be 'stultified'.

Conclusion

- 37 In our view no error has been shown in how the judge brought together the competing considerations. Indeed, we are of the view that the decision to refuse the pseudonym order was plainly correct. On no view of the material relied upon by the applicants in support of their application for pseudonym orders could it be said that pseudonym orders were necessary so as not to prejudice the administration of justice.

²⁰ Reasons, [36(b)].

²¹ Reasons, [36].

²² *PQR v Secretary, Department of Justice and Regulation [No 1]* (2017) 53 VR 45, [70] (Bell J); [2017] VSC 513, citing *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) v Local Court of NSW* (1991) 26 NSWLR 131, 140 (Kirby P).

²³ *ABC v DI* [2007] VSC 480, [65].