

AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY

CRIMINAL JUSTICE SYSTEM

22 May 2023

Michelle Gunn
Editor-in-chief
The Australian
2 Holt Street
Surry Hills NSW 2010

By email: gunnm@theaustralian.com.au

Dear Ms Gunn,

I have no doubt that you appreciate that being called to give evidence at a public inquiry can be daunting to a person. I know from my previous experience in conducting public inquiries that the prospect of being required to give evidence can actually cause a witness to become sick. For that reason, inquiry staff take great pains, whenever possible, to support witnesses in a variety of ways to ensure that they can face this potentially distressing experience with some confidence.

It is against that background that I write to you about the photo of Mr Shane Drumgold SC published in the Australian on 19 May 2023. I attach a copy of the photo and its associated article.

That photo appears to me to be capable of an inference.

It might be inferred that the journalists and the photographer associated with the photo took the trouble to discover Mr Drumgold's home address, or covertly followed him to his home, where the photographer hid in a position from which he could take a photo of Mr Drumgold without his knowledge or consent using a telephoto lens. Unlike the photos taken openly of Mr Drumgold, as he went about his professional business, this was an manoeuvre to catch him in an informal state, caught off guard. The result was a photo that is captioned in a clever way to demean its subject: *Crown lager or Drumgold bitter? Prosecutor calls beer o'clock.*

Thus, it might be inferred that the purpose of the publication was to humiliate Mr Drumgold.

As I understand it, a photograph published to support a news article can serve one of two proper purposes. It can corroborate the story. So, the publication of a photo of Mr Drumgold leaving an inquiry hearing corroborates a story about his attendance to give evidence by demonstrating his presence and, to a small extent, it may add some interest.

A photo can also add information to a story by revealing something that the written word alone cannot do, such as when a weeping relative is pictured leaving a sentence hearing.

There may be other purposes of which I am unaware but these are the two that I know about. I am baffled by this photo. It is incapable of serving either of these purposes nor, as far as I can tell, any other proper purpose. Rather, it appears to have been used just to humiliate Mr Drumgold.

If that is so, the publication of the photo, as well as the covert way in which it was obtained, can have legal consequences.

I have pointed out to you that most, if not all, witnesses are loathe to give evidence at a public inquiry for reasons that can be easily understood. The real prospect that one may be stalked to one's home, where a photographer will take a photo calculated to embarrass or humiliate the witness in the public eye, may create a genuine motivation not to cooperate with my inquiry.

I have the power to compel witnesses to give me their evidence, both in private and at a public hearing. However, I rely upon the actual willingness of witnesses to give me their earnest assistance. Without genuine cooperation, freely given, my ability to perform my duty would be hampered. It follows that persons who create such unwillingness are interfering with the conduct of my inquiry.

I therefore ask you to inform me what was your purpose in publishing this particular photo of Mr Drumgold because I myself am unable to discover a relationship between this photograph and a fair report of the proceedings or a report about a matter of public interest. Your response will allow me to determine whether I have to take any steps to ensure the continuity of full cooperation by witnesses who are yet to give evidence, including Mr Drumgold, or to protect them.

I am hoping that a prompt response by you will preclude the need for me to inquire into the issue further. In any event, I would be grateful for your prompt reply, which I will consider in deciding which course to take.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'W. Sofronoff', written in a cursive style.

Walter Sofronoff KC
Chair
Board of Inquiry – Criminal Justice System