



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest into the deaths arising from the Lindt Café siege

Ruling re application to set aside non publication orders

Inquest: **INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE (KATRINA DAWSON, TORI JOHNSON AND MAN HARON MONIS)**

File number: 2014/368881, 2014/368701 and 2014/369898

Coroner: **STATE CORONER MICHAEL BARNES**

Date of judgment: 26 August 2015

Catchwords: **CORONIAL LAW** – section 74 of the *Coroners Act 2009* (NSW) – non publication orders – public interest – matters to have regard to

Legislation: *Coroners Act 2009* (NSW) section 74(1)(b) and 74(2)

Cases cited: *Marsden v Amalgamated Television Service Pty Ltd* [2000] NSWSC 376
Mirror Newspapers Ltd v Waller (1985) 1 NSWLR 1

Date of hearing: 25 and 26 August 2015

Place: Sydney

Number of paragraphs: 17

Counsel Assisting: J Gormly SC with S Callan

Solicitor Assisting: M Heris, Office of the State Coroner

Counsel for the Director of Public Prosecutions (NSW): D Buchanan SC with M England

Solicitor for the Director of Public Prosecutions (NSW): N Malhotra, Crown Solicitor's Office

Counsel for Lawyer 2: A Francis with S McGee

Counsel for Nationwide News, the Australian Broadcasting Corporation, Fairfax, Channel 7 and Channel 9: D Sibtain

**IN THE STATE CORONER'S COURT
OF NEW SOUTH WALES**

**2014/368881
2014/368701
2014/369898**

INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE

CORONER: STATE CORONER MICHAEL BARNES

DATE OF ORDER: 26 AUGUST 2015

WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

1. The orders made on 17 August 2015, and varied on 24 August 2015, pursuant to s. 74(1)(b) of the *Coroners Act 2009* (NSW), with respect to the identities of lawyer 1 and lawyer 2, be maintained, until further order.

Introduction

1. On 17 August 2015 pursuant to s. 74(1)(b) of the *Coroners Act 2009* (NSW) I made orders prohibiting the publication of the names of two Office of the Director of Public Prosecutions (“**ODPP**”) lawyers who had appeared on behalf of the Director of Public Prosecutions (“**DPP**”) in bail applications concerning Man Monis on 12 December 2013 and 10 October 2014 respectively. I shall refer to them as ‘lawyer 1’ and ‘lawyer 2’ respectively. Those orders were varied on 24 August 2015.
2. The orders were made without the benefit of a contradictor and I expressly reserved the right to those impacted by the ruling to have them reconsidered upon them giving notice of a desire to do so.
3. That has now occurred. Counsel appearing on behalf of a number of media organisations has applied to have the non publication orders withdrawn.

The law

4. Section 74(1)(b) authorises a Coroner in coronial proceedings to order that any evidence given in the proceedings not be published if he or she is of the opinion to do so would not be in the public interest.
5. Insofar as is relevant to this matter s. 74(2) provides that for the purposes of forming an opinion as to the public interest the Coroner *may* have regard to:
 - ‘(a) The principle that coronial proceedings should generally be open to the general public; and
 - ...
 - (d) The personal security of the public or any person.’
6. The authorities usefully drawn to my attention enable me to extract the following principles relevant to interpreting s. 74:
 - (a) proceedings before a coroner’s court should be open to be reported by the news media, and a non publication order should be made only where it is necessary to prohibit such reports from frustrating or rendering impractical the administration of justice – *Mirror Newspapers v Waller* (1985) 1 NSWLR 1 at 27B;
 - (b) a non publication order may relate to the whole of the evidence given at an inquest, to any part of the evidence, or it may be limited to a name of any person mentioned. In each case the Coroner must apply the general rule (referred to above) that proceedings should be able to be reported by the news media unless those reports would frustrate or render impracticable the administration of justice – *Mirror Newspapers* at 26B;

- (c) the fact that information is given in open court does not convert material which is irrelevant, or in which the public has no legitimate interest, into material in which the public has such an interest – *Mirror Newspapers* at 22C;
- (d) while the embarrassment caused to a party or a witness by being named is not a sufficient basis on which to make a non publication order, it is not an irrelevant consideration – *Mirror Newspapers* at 21C;
- (e) the fact that evidence is given in open court and able to be heard, commented upon, and repeated by persons present, does not necessarily lead to the conclusion that there is no basis for a non publication order preventing the media from publishing a report about the same material. See the comparison of *voir dire* evidence discussed in *Mirror Newspapers* at 19B; and
- (f) in determining whether the interests of justice are compromised it is legitimate to have regard to the minimalist interference with open justice resulting from a witness giving evidence using a pseudonym – *Marsden v Amalgamated Television Service Pty Ltd* [2000] NSWSC 376 at [5].

Submissions

7. Counsel for lawyer 1 based his application on two considerations:
 - (a) the risk of harm to the personal security of his client; and
 - (b) the impact of the disclosure of his client’s identity on the administration of justice.
8. In relation to the personal security basis for the claim, Mr Buchanan SC points to the evidence from lawyer 1’s supervisor that she has concerns for his welfare. She says he has become quite distracted and has difficulty concentrating on his work. She says she and he are concerned that he will himself be the subject of threats if he is personally identified as the solicitor involved in the relevant bail application.
9. Counsel for the news media organisations seeking to have the non publication orders set aside submits that distress and damage to reputation are insufficient bases on which to maintain the orders, and that the evidence in this case points to nothing more.
10. As noted above, Counsel for lawyer 1 also points to evidence from his client’s supervisor that disclosing the identity of his client risks undermining the public confidence of those who rely upon the services provided by the ODPP in the office in which lawyer 1 works, and this has the potential to jeopardise the proper administration of the criminal justice system in that particular region.
11. Counsel for the news media organisations submits there is no evidence to support these concerns.

12. Counsel for lawyer 2 submits publication of her client's name would discourage him from contributing to any recommendations designed to address any shortcomings in the operation of the ODPP, and hence hinder the effectiveness of this inquest. She points out that the considerations listed in s. 74(2) are non exhaustive and that an order is justified on the basis of risk to the welfare of her client even if no risk to his personal security can be made out.
13. She also submits that identifying individual officers of the ODPP would be counterproductive in light of the function of that office, and hence be adverse to the administration of justice.
14. Counsel for the news media organisations maintains there is no evidence that publishing lawyer 2's name would have adverse effects on the administration of justice and that what lawyer 2's counsel refers to as welfare concerns are the routine impacts of participating in such proceedings. He also points out that neither lawyer has produced any medical evidence to support their claims.

Ruling

15. I am conscious of and regret the adverse impact on witnesses of their giving evidence in these proceedings. Regrettably, it frequently occurs as a result of the nature of the matters that come before a coroner's court.
16. I am also conscious of, and fully support, the valuable role the news media play in informing the public about these proceedings – it is a fundamental aspect of our liberal democracy.
17. Having regard to the matters raised by the parties and to the following considerations:
 - (a) the very high level of public interest in this matter;
 - (b) the accusatory nature of some of the media items published to date, which appear to lay blame for the siege on the ODPP officers lawyer 1 and lawyer 2;
 - (c) the minimal restriction on the ability of the media to report these proceeding imposed as a result of the existing non publication orders;
 - (d) the significant negative impact upon the welfare of lawyer 1 and lawyer 2 that could foreseeably flow from their being named; and
 - (e) the interim nature of the orders, which are limited to expire when my findings are delivered;

I conclude that it is in the public interest that the orders be maintained.