Reece, Jayne

From: Reece, Jayne
Sent: Tuesday, 12 September 2023 11:19 AM
To: Kettle, Derek; Ian.Meagher@ballawyers.com.au
Subject: Drumgold v Board of Inquiry - Criminal Justice System and ors (SC 347 of 2023)

Importance: High

OFFICIAL

Dear Parties

The Chief Justice has asked me to inform the parties of the following matters in advance of the first listing of these proceedings on 14 September 2023. Her Honour has formed the view that it would not be appropriate for any present judge of the court to hear these proceedings and will accordingly seek the appointment of a judge from another jurisdiction, as allowed under s 4A or s 4B of the Supreme Court Act 1933 (ACT).

The process for achieving such an appointment is complicated by two considerations. First, as the parties will be aware, the Chief Justice presided over the trial of Mr Lehrmann. Secondly, the power to appoint either an additional judge (s 4A) or an acting judge (s 4B) reposes in the Executive (the third defendant to the proceedings) and is ordinarily made by Commission under the hand of the Attorney General (the second defendant).

In those unusual circumstances, to ensure that the process of appointment is appropriate and transparent and to avoid any conflict of interest for the second and third defendants, the Chief Justice wrote last week to Chief Justice Anne Ferguson, the Chief Justice of Victoria, to ask whether her Honour would be prepared to make a judge of the Supreme Court of Victoria available to hear and determine the matter. In her letter, Chief Justice McCallum indicated that she would ask the Executive to appoint the person nominated by Chief Justice Ferguson. This was to obviate the need for either Chief Justice McCallum or the Executive to participate in the selection of the person to be appointed.

Chief Justice Ferguson has responded to that request by indicating that she is very pleased to make a judge of her Court available to hear the proceedings. Her Honour has nominated Justice Stephen Kaye. Justice Kaye was first appointed as a judge of the Trial Division of the Supreme Court of Victoria in 2003 and was appointed to the Victorian Court of Appeal in 2015. Since December 2021, Justice Kaye has served as a Reserve Judge in both the Trial Division and the Court of Appeal.

I write to advise that in light of this Chief Justice McCallum will ask the Executive to appoint Justice Stephen Kaye as an acting judge of the Supreme Court of the Australian Capital Territory pursuant to s 4B of the Supreme Court Act for the purpose of hearing and determining the judicial review proceedings brought by Mr Shane Drumgold SC.

Kind Regards

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SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MFI 1.
JUDGE Registrar Reece.
Drumgold. V Board of Inquiry
SC ____ No. 347 OF 23 DATE 21/9/23.
RETURN TO ____
ASSOCIATE ____