



FORM 5A

Rule 5.02(1)

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

Case: S ECI 2020 03614

Filed on: 16/09/2020 09:58 AM

No. S ECI 2020

BETWEEN:

AVRAHAM YEMINI

Plaintiff

-and-

STATE OF VICTORIA

Defendant

WRIT

Date of Document: 15 September 2020

Solicitors Code: 114081

Filed on behalf of: The Plaintiff

Telephone: 1300 616 183

Prepared by:

Ref: CV2001

Smith & Tapper Lawyers

Email: msmith@smithtapper.com.au

40/140 William Street
Melbourne VIC 3000

Attention: Madeleine Smith

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED 16 September 2020

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

No. S ECI 2020

BETWEEN:

AVRAHAM YEMINI

Plaintiff

-and-

STATE OF VICTORIA

Defendant

STATEMENT OF CLAIM

Date of Document: 15 September 2020

Solicitors Code: 114081

Filed on behalf of: The Plaintiff

Telephone: 1300 616 183

Prepared by:

Ref: CV2001

Smith & Tapper Lawyers

Email: msmith@smithtapper.com.au

40/140 William Street

Attention: Madeleine Smith

Melbourne VIC 3000

1. At all relevant times, the Defendant operated the Victoria Police Force.
2. The Plaintiff brings this proceeding against the Defendant, through its servant or agent Police officers of the Victoria Police Force, pursuant to section 23 of the *Crown Proceedings Act 1958* (Vic) and Part IV, Division 8 of the *Victoria Police Act 2013* (Vic).

5 SEPTEMBER 2020

Unlawful arrest

3. On 5 September 2020, the Plaintiff was lawfully working as a journalist and reporting on the "lockout law rally" protests taking place at Albert Park, Melbourne, in the State of Victoria.
4. While performing his work as a journalist on the said date, servants and agents of the Defendant purported to arrest the Plaintiff without warrant.

5. At the time of his purported arrest, the Plaintiff was not informed of the basis or bases on which he was being arrested.
6. Further, the Plaintiff was not provided with an explanation for the reason or reasons for the purported arrest with sufficient particularity so that the Plaintiff could understand the reason or reasons for the purported arrest.
7. Subsequent to the purported arrest, servants or agents of the Defendant informed the Plaintiff that he had been arrested on the basis of hindering Police and being asked to move as he was between two Police lines. At no time on the said date was the Plaintiff asked to move as he was between two Police lines, nor acting or reasonably suspected of acting unlawfully on the said date or hindering Police.
8. In the premises, the Plaintiff was unlawfully arrested by servants and agents of the Defendant.

False imprisonment

9. When the Plaintiff was purportedly arrested by servants and agents of the Defendant, he was directly and intentionally and/or negligently totally restrained by servants or agents of the Defendant without lawful justification.
10. Later that day, the Plaintiff was released from the false imprisonment, pending "further inquiries" and given a 'move on' notice from servants or agents of the Defendant.
11. In the premises, the Plaintiff was falsely imprisoned by servants or agents of the Defendant until his release.

Battery

12. While the Plaintiff was arrested and falsely imprisoned by servants or agents of the Defendant, the Plaintiff was manhandled, thrown to the ground, and put into handcuffs by servants and agents of Victoria Police Force.
13. The Plaintiff was manhandled with excessive force.
14. Further, the handcuffs were needlessly and wrongfully applied and applied to the Plaintiff too tightly, causing the Plaintiff injury to his hands and wrists.

15. The said contact, force and use of handcuffs on the Plaintiff comprised acts of battery to the Plaintiff as they were direct and intentional and/or negligent offensive physical contact on the Plaintiff.

AUSTRALIA DAY 2020

16. On 26 January 2020, Australia Day, and at all relevant times, the Plaintiff was situated in the Central Business District ("CBD") of Melbourne, in the State of Victoria.
17. At all material times, on the said date, while situated in the CBD of Melbourne, the Plaintiff was lawfully performing work as a journalist, reporting on the Australia Day "Pay the Rent" protests and conducting interviews of persons in the CBD, including protesters.

Unlawful arrest

18. While performing his work as a journalist on the said date, servants and agents of Victoria Police Force:
- (a) targeted the Plaintiff;
 - (b) sought to and then became intent on "moving" the Plaintiff on without any or any proper basis;
 - (c) prevented the Plaintiff performing his work as a journalist and reporting on and publicising his views about the protests; and
 - (d) purported to arrest without warrant the Plaintiff to remove the Plaintiff from the area.
19. At no time on 26 January 2020 was the Plaintiff:
- (a) breaching the peace or suspected on reasonable grounds of breaching the peace;
 - (b) hindering Police;
 - (c) committing any other criminal act, that gave rise to a legal justification for the said arrest, which arrest was unlawful.
20. Further, the Plaintiff relies on section 6(5) of the *Summary Offences Act 1966* (Vic) that he was unlawfully arrested, to the extent, if at all, that the arrest was purportedly made under section 6 of the *Summary Offences Act 1966* (Vic).
21. Further, at the time of the said arrest, the Plaintiff was not informed of the basis or bases with which he was purportedly arrested.

22. Further, the Plaintiff was not provided with an explanation for the reason or reasons for the purported arrest with sufficient particularity so that the Plaintiff could understand the reason or reasons for the purported arrest.
23. In the premises, the Plaintiff was unlawfully arrested by servants and agents of the Defendant.

False imprisonment

24. When the Plaintiff was purportedly arrested by servants and agents of the Defendant, he was directly and intentionally and/or negligently totally restrained by servants or agents of the Defendant without lawful justification, until he was released later that day.
25. The said restraint included the Plaintiff being manhandled, handcuffed and locked in a Police vehicle.
26. In the premises, the Plaintiff was falsely imprisoned by servants or agents of the Defendant.

Battery

27. While the Plaintiff was unlawfully arrested and falsely imprisoned by servants or agents of the Defendant, the Plaintiff was manhandled and put into handcuffs by servants and agents of Victoria Police Force.
28. The Plaintiff was manhandled with excessive force or with force that was disproportionate to the objectives of the servants or agents in purportedly protecting the Plaintiff from protesters, so as to comprise a battery upon the Plaintiff.
29. Further, the handcuffs were needlessly and wrongfully applied and applied to the Plaintiff too tightly, causing the Plaintiff injury to his hands and wrists.

PARTICULARS

The handcuffs were applied despite the fact that the Plaintiff was purportedly being arrested and imprisoned for his own safety and protection from protesters.

30. The said applying of the handcuffs and/or applying the handcuffs too tightly was unnecessary and amounted to the tort of battery on the Plaintiff by servants or agents of the Defendant.

31. The said contact, force and use of handcuffs on the Plaintiff comprised acts of battery to the Plaintiff as they were direct and intentional and/or negligent offensive physical contact on the Plaintiff.

INJURY, LOSS AND DAMAGE

32. As a result of the various police torts set out above, the Plaintiff has suffered and will continue to suffer injury, loss and damage.

PARTICULARS OF INJURY

As a result of the said torts, the Plaintiff has suffered the following:

- a) Physical injury, in particular injury to his wrists and hands.
- b) Stress and anxiety.
- c) Affected reputation.
- d) Effects on the Plaintiff's family life.
- e) Humiliation.
- f) Hypervigilance and consciousness of surveillance of his home.

PARTICULARS OF SPECIAL DAMAGE OF THE PLAINTIFF UNDER PART 13.10(4) OF THE COURT'S RULES

The Plaintiff was born on 17 October 1985.

The Plaintiff works as a journalist. As a result of the various police torts set out above, the Plaintiff's capacity to undertake his work as a journalist has been hampered and will continue to be hampered, including by his reluctance to attend on and report about protests without fear of being the subject of further police torts by servants or agents of the Defendant, causing him a loss of earnings and loss of earning capacity.

AGGRAVATED AND EXEMPLARY DAMAGES

The Plaintiff claims aggravated and exemplary damages against the Defendant.

In committing the various police torts set out above, the Defendant acted in a deliberate, intentional, reckless and contumelious manner and in disregard of the Plaintiff's interests, acting in a high-handed way, or with malice.

The Plaintiff seeks aggravated damages for distress, pain, insult, hurt, humiliation and the like, including by being arrested in public, manhandled, handcuffed and falsely imprisoned. Further, in particular in respect of the Australia Day arrest, the Plaintiff was humiliated and insulted when he was arrested and falsely imprisoned in public and faced

derision and mocking by those members of the public who saw his being arrested and falsely imprisoned.

Further, the Defendant's servants or agents added insult to injury in attending the private residence of the Plaintiff on 3 and 5 September 2020 to intimidate the Plaintiff and stop him from undertaking his lawful work as a journalist reporting on public protests, including being placed on a watch "list" and that he would be visited by Police again "tomorrow" following the 5 September 2020 attendance.

Further, in respect of the 5 September 2020 incident, the Plaintiff was the victim of false reporting by servants and agents of the Defendant, that "[a]fter repeatedly failing to comply with police direction, he was arrested for hindering police", which was untrue and the Defendant knew or ought to have known that this was untrue.

The Plaintiff seeks exemplary damages to:

- a) mark the Court's disapprobation of the conduct; and
- b) as a deterrent to the Defendant to ensure that the police officers are properly trained and understand their every responsibility.

33. Further, the Plaintiff is entitled to claim damages for his non-economic loss as the fault concerned is, or relates to, intentional acts that were done with intent to cause injury within the meaning of section 28LC(2)(a) of the *Wrongs Act 1958* (Vic).

AND THE PLAINTIFF CLAIMS:

- A. Damages, including aggravated and exemplary damages.
- B. Interest pursuant to the *Supreme Court Act 1958* (Vic).
- C. Costs.

P G HAMILTON



Smith & Tapper Lawyers

Solicitors for the Plaintiff

Dated: 15 September 2020

1. Place of trial— Melbourne
2. Mode of trial— Jury
3. This writ was filed— For the plaintiff by Smith & Tapper Lawyers of 40/140 William Street,
Melbourne VIC 3000
4. The address of the plaintiff is— 241/205 Collins Street, Melbourne VIC 3000
5. The address for service of the plaintiff is—

Smith & Tapper Lawyers
40/140 William Street
Melbourne VIC 3000
6. The email address for service of the plaintiff is— msmith@smithtapper.com.au
7. The address of the defendant is—

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