



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

No. S ECI 2020 03614 2020 03614

Filed on: 11/08/2021 01:31 PM

BETWEEN:

AVRAHAM YEMINI

Plaintiff

-and-

STATE OF VICTORIA

Defendant

AMENDED STATEMENT OF CLAIM

Filed pursuant to the Orders of Judicial Registrar Baker dated 10 August 2021.

Date of Document: ~~15 September 2020~~

Solicitors Code: 114081

11 August 2021

Telephone: 1300 616 183

Filed on behalf of: The Plaintiff

Ref: CV2001

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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 purported 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.

AUSTRALIA DAY 2021

32. On 26 January 2021, Australia Day, and at all relevant times, the Plaintiff was situated in the CBD of Melbourne, in the State of Victoria.
33. At all relevant 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 protests and conducting interviews of persons in the CBD, including protesters.

Unlawful arrest

34. 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.
35. At no time on 26 January 2021 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.

36. 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).
37. Further, at the time of the said arrest, the Plaintiff was not informed of the basis or bases with which he was purportedly arrested.
38. 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.
39. In the premises, the Plaintiff was unlawfully arrested by servants and agents of the Defendant.

False imprisonment

40. 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, and taken away from the area by Police vehicle, until he was released later that day.
41. In the premises, the Plaintiff was falsely imprisoned by servants or agents of the Defendant.

Battery

42. While the Plaintiff was unlawfully arrested and falsely imprisoned by servants or agents of the Defendant, the Plaintiff was physically handled by servants and agents of Victoria Police Force.

43. The said physical contact 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.

PRESS CONFERENCE – 17 FEBRUARY 2021

44. The Plaintiff attended Premier the Honourable Daniel Andrews Press Conference in Parliament Gardens, Melbourne, in the State of Victoria as an accredited journalist.

Unlawful arrest

45. 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 attending the Premier’s press conference; and
 - (d) purported to arrest without warrant the Plaintiff to remove the Plaintiff from the area.
46. Further, at the time of the said arrest, the Plaintiff was not informed of the basis or bases with which he was purportedly arrested.
47. 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.

48. Further, the Plaintiff was arrested on the basis that the Premier, or his Personal Assistant, did not want him to attend the press conference, which provided no lawful justification or proper basis for purportedly arresting the Plaintiff.
49. In the premises, the Plaintiff was unlawfully arrested by servants and agents of the Defendant.

False imprisonment

50. 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, and taken away from the area by Police vehicle, until he was released later that day.
51. In the premises, the Plaintiff was falsely imprisoned by servants or agents of the Defendant.

Battery

52. While the Plaintiff was unlawfully arrested and falsely imprisoned by servants or agents of the Defendant, the Plaintiff was physically handled by servants and agents of Victoria Police Force.
53. The said physical contact 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.

29 May 2021

Assault

54. On or about 29 May 2021, the Plaintiff was assaulted by servants or agents of the Defendant, when the Plaintiff was unlawfully directed that he had to wear a face mask because he was not an accredited journalist according to Victoria Police, thereby causing the Plaintiff to apprehend that he was and/or would be unlawfully touched, unlawfully arrested and falsely imprisoned.

PARTICULARS

On the said date, the Plaintiff was directed to put on a face mask by the servants and agents of the Defendant. The Plaintiff explained that journalists were not required to wear face masks while they are talking into their microphone and recording – which the Plaintiff was doing at the time. The servants or agents of the Defendant continued to insist that the Plaintiff put on his face mask. When the Plaintiff reiterated that it was lawful for him to not be wearing a face mask, the actions of the servants and agents of Victoria Police Force which followed, including taking down his name and address, and not allowing him to have freedom of movement, caused the Plaintiff to believe that he was and/or would be unlawfully touched, falsely arrested and falsely imprisoned, thereby committing an assault.

Trespass to goods

55. During the said incident on or about 29 May 2021, a servant and agent of the Defendant touched the Plaintiff's microphone unlawfully, thereby committing the tort of trespass to goods.

False imprisonment

56. During the said incident on or about 29 May 2021, servants and agents of the Defendant falsely imprisoned the Plaintiff by not allowing him to have freedom of movement whilst they were ignorant of and then assessing the status of the law, thereby falsely imprisoning the Plaintiff.

4 June 2021

Private Nuisance

57. Three servants or agents of the Defendant unreasonably interfered with the Plaintiff's use and enjoyment of his property rights when they approached the Plaintiff's home address in darkness at around 8.30pm on or about 4 June 2021 and hand-delivered him a letter from the Assistant Commissioner North West Metropolitan Region.

PARTICULARS

The said letter is dated 4 June 2021 and signed by Luke Cornelius APM,
Assistant Commissioner North West Metropolitan Region.

58. The letter was intended to stop the Plaintiff from attending further protests in his capacity as a journalist.
59. The Defendant had no basis to write to, nor hand deliver to his home address under cover of darkness, the said letter to the Plaintiff, and in so doing the Defendant's actions constituted a private nuisance.

INJURY, LOSS AND DAMAGE

60. 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 2020 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 ~~intimate~~ 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.

Further, in respect of the Australia Day 2021 incident, the Plaintiff was taken to Caulfield in Victoria and left there by Police for no explicable reason, which was humiliating.

Further, in respect of the Press Conference, the Plaintiff was accused of entering the premises based on false credentials, which was untrue and humiliating.

Further, in respect of the events on 29 May 2021, the Defendant was ignorant of the law when making demands of the Plaintiff, which had no lawful basis, bullying and humiliation the Plaintiff while he sought to explain his legal rights.

Further, in respect of the 4 June 2021 attendance at his home, the Plaintiff was humiliated and intimidated in his own home by the Defendant.

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.

61. 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



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Smith & Tapper Lawyers

Solicitors for the Plaintiff

Dated: ~~15 September 2020~~

11 August 2021