



FORM 5A

Rule 5.02(1)

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

Case: S ECI 2021 02914

Filed on: 13/08/2021 01:39 PM

No. S ECI 2020

BETWEEN:

DANIEL JONES

Plaintiff

-and-

STATE OF VICTORIA

Defendant

WRIT

Date of Document: 13 August 2021

Solicitors Code: 114081

Filed on behalf of: The Plaintiff

Telephone: 1300 616 183

Prepared by:

Ref: CV2003

Smith & Tapper Lawyers

Email: msmith@smithtapper.com.au

40/140 William Street

Attention: Madeleine Smith

Melbourne VIC 3000

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 13 August 2021

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.

BETWEEN:

DANIEL JONES

Plaintiff

-and-

STATE OF VICTORIA

Defendant

STATEMENT OF CLAIM

Date of Document: 13 August 2021

Solicitors Code: 114081

Filed on behalf of: The Plaintiff

Telephone: 1300 616 183

Prepared by:

Ref: CV2003

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 ("Victoria Police officers"), pursuant to section 23 of the *Crown Proceedings Act 1958* (Vic) and Part IV, Division 8 of the *Victoria Police Act 2013* (Vic).

24 JULY 2021

3. On 24 July 2021 (the 'said date'), the Plaintiff was lawfully working as a licensed security guard for an authorised reporting journalist at a 'Freedom Day' rally and protests taking place at or about Flinders Street Station, Melbourne, in the State of Victoria.

PARTICULARS

On the said date and while performing his security duties, the Plaintiff was wearing a high visibility security vest, which was marked "security" on the back and had a company name and logo on the front of the same.

Unlawful arrest

4. While performing his work as a licensed security guard on the said date, Victoria Police officers:
 - (a) targeted the Plaintiff;
 - (b) prevented the Plaintiff performing his work as a licensed security guard to protect a journalist reporting on the protests;
 - (c) purported to arrest the Plaintiff without warrant.

5. At no time on 24 July 2021 was the Plaintiff:
 - (a) hindering police;
 - (b) committing any other offence,rendering the purported arrest unlawful.

6. Further, at the time of his purported arrest, the Plaintiff was not informed of the basis or bases for which he was being arrested, rendering the arrest unlawful.

7. 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, rendering the arrest unlawful.

False Imprisonment

8. When the Plaintiff was purportedly arrested by Victoria Police officers, he was directly and intentionally and/or negligently totally restrained by Victoria Police officers without lawful justification, and taken away from the area by Police vehicle and detained at Melbourne West Police Station, until he was released later that day.

9. In the premises, the Plaintiff was falsely imprisoned by Victoria Police officers.

10. Further, or in the alternative, the Plaintiff was restrained for a period of time that was excessive, during which excessive period he was falsely imprisoned.

Assault

11. On or about the said date, the Plaintiff was assaulted by Victoria Police officers, when the Plaintiff was targeted by multiple Victoria Police officers, who had been instructed to arrest

the Plaintiff for no reason apparent to the Plaintiff, thereby causing the Plaintiff to apprehend that he was being and/or would continue to be unlawfully touched, unlawfully arrested and falsely imprisoned.

PARTICULARS

On the said date, the Plaintiff was rushed by numerous Victoria Police officers, who were acting under instructions to arrest him. When the Plaintiff repeatedly explained that he was working as a licensed security guard for an authorised journalist reporting on the 'Freedom Day' rally, the actions of the Victoria Police officers which followed, including encircling him without explanation, attempting to and grabbing hold of him from all angles, yelling at him and not allowing him to have freedom of movement, caused the Plaintiff to fear that he was going to be unlawfully touched, falsely arrested and falsely imprisoned, thereby constituting an assault.

Battery

12. While the Plaintiff was unlawfully arrested and falsely imprisoned by Victoria Police officers, the Plaintiff was physically handled by Victoria Police officers, which handling amounted to torts of battery on the Plaintiff.

PARTICULARS

The Plaintiff was grabbed initially and then tackled to the ground by the Victoria Police officers, wherein he was physically restrained, intentionally and/or negligently kneed, punched, rolled violently, and handcuffed. The Plaintiff's hair was also pulled.

13. Further, or in the alternative, the Plaintiff was manhandled with excessive force or with force that was disproportionate to the objectives of the Victoria Police officers in purportedly preventing the commission, continuance, or completion of an indictable offence, therefore amounting to torts of battery on the Plaintiff.
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 applying of the handcuffs and/or applying the handcuffs too tightly was unnecessary and amounted to the tort of battery on the Plaintiff by Victoria Police officers.
16. 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

17. As a result of the various torts committed by Victoria Police pleaded herein, 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 hands and wrists.
- b) Stress and anxiety.
- c) Affected reputation.
- d) Humiliation.

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

The Plaintiff was born on 28 November 1981.

The Plaintiff works as a licensed security guard. As a result of the various torts committed by the police set out above, the Plaintiff's reputation has been affected and affecting his ability to continue to do his work as a security guard because of the events described above.

Accordingly, the Plaintiff's employment in the future is at risk of being affected, for which he claims loss of earning capacity.

Further particulars will be provided by way of a List of Special Damages.

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, loss of reputation and the like, including by being arrested in public, manhandled, handcuffed and falsely imprisoned.

The Plaintiff, who in his employment as a licenced security worker requires a working relationship with Victoria Police, has lost faith in the Defendant's conduct. Further, the Plaintiff fears that he will lose employment because of his reputational damage and the fact that he was himself arrested rather than protecting others as a security guard.

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 Victoria Police officers are properly trained and understand their every responsibility.

18. 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: 13 August 2021

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. [REDACTED]

5. The address for service of the plaintiff is—

Smith & Tapper Lawyers
40/140 William Street
Melbourne VIC 3000

6. [REDACTED]

7. The address of the defendant is—

Victoria Police Civil Litigation Unit
Level 28, Tower 1
311 Spencer Street
Docklands VIC 3008