



IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

Case: S ECI 2022 03440

Filed on: 16/12/2024 09:03 AM

BETWEEN

**JORDAN BROWN**

Plaintiff

and

**STATE OF VICTORIA**

Defendant

### WRIT

Date of Document: 01 September 2022

Filed on behalf of: The Plaintiff

Solicitor Code: 110756

DX: N/A

Prepared by:

Phi Finney McDonald

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Melbourne VIC 3000

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### 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** [*insert date*]

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.

1. Place of trial— Melbourne.
2. Mode of trial— Judge.
3. This writ was filed for the plaintiff by Phi Finney McDonald as solicitors for the plaintiff.
4. The address of the plaintiff is: 263 Glenlyon Road, Fitzroy North VIC 3068.
5. The address for service of the plaintiff is: c/- Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000.
6. The email address for service of the plaintiff is:  
[olivia.mcmillan@phifinney-mcdonald.com](mailto:olivia.mcmillan@phifinney-mcdonald.com).
7. The address of the defendant is as follows: Level 25, 121 Exhibition Street, Melbourne VIC 3000.

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

S

BETWEEN

**JORDAN BROWN**

Plaintiff

and

**STATE OF VICTORIA**

Defendant

**AMENDED STATEMENT OF CLAIM**

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Date of Document: ~~01 September 2022~~ [ ]

December 2024

Filed on behalf of: The Plaintiff

Prepared by:

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Melbourne VIC 3000

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**A. THE PLAINTIFF AND GROUP MEMBERS**

**A.1 Group Members**

1. The Plaintiff commences this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of all persons who:
  - (a) were present at a protest in respect of the International Mining and Resources Conference (the **IMARC Conference**) outside the Melbourne Convention and Exhibition Centre (the **Convention Centre**) in Southbank, Melbourne on 30 October 2019 (the **IMARC Protest**) between 11.44am and 12.35pm (**Relevant Time Period**); and
  - (b) suffered harm as a result of being sprayed with Oleoresin Capsicum (**OC**) foam by members (**Police Officers**) of the police force of Victoria (**Victoria Police**) between around 12.10 to 12.35pm;
  - (c) but does not include the two people who climbed the Convention Centre poles (the **Climbers**),

(the **Group Members**).

2. At the commencement of this proceeding, there are more than seven Group Members who make the claims set out in this statement of claim against the Defendant.

## **A.2 The Plaintiff**

3. The Plaintiff:
  - (a) is a natural person who was born in 1985;
  - (b) attended the IMARC Protest on 30 October 2019 (the **Date**);
  - (c) was the subject of pushing, crushing and grabbing by one or more Police Officers at the IMARC Protest;
  - (d) was sprayed with OC foam by one or more Police Officers at the IMARC Protest;
  - (e) as a result of being pushed, crushed, grabbed and sprayed by OC foam suffered:
    - (i) acute burning of skin and eyes for hours. In the days following the Date the Plaintiff had trouble focussing, blurry vision, extreme itchiness, irritation, sensitivity to light, redness and pain;
    - (ii) musculoskeletal injury to spine and shoulders;
    - (iii) distress, fear, and psychiatric injury.  
(the **Injury**).

## **B. THE DEFENDANT**

4. At all relevant times the Defendant operated Victoria Police.
5. The Defendant:
  - (a) is sued, and is capable of being sued, pursuant to Part 4, Division 8 of the *Victoria Police Act 2013* (Vic) (**VPA**);
  - (b) pursuant to s 74 of the VPA, is liable for the commission of “police torts” within the meaning of that phrase in s 73 of the VPA, except where s 74(2) of that Act applies;
  - (c) has conduct of the proceeding on behalf of officers of Victoria Police alleged to have committed police torts.

## C. ROLES, POWERS AND RESPONSIBILITIES OF VICTORIA POLICE

6. At all relevant times, Victoria Police contained specialist units including the Operations Response Unit and, within the ORU, the Public Order Response Team (**PORT**).

### Particulars

The Operations Response Unit and the PORT respond to public safety incidents, including protests, demonstrations and riots. Members of the ORU are required to have completed specialist crowd control training.

7. At all relevant times:

- (a) Acting Inspector Graham Caldwell (**PORT Tactical Commander**); and
- (b) Other Police Officers under the command of the PORT Tactical Commander on the Date, were members of Victoria Police appointed in accordance with the provisions of the *Police Regulation Act 1958 (Vic)* and / or the VPA as in force from time to time.

### Particulars

- (i) The Plaintiff is presently unable to identify each Police Officer present at the IMARC Protest save to say that they were attending the IMARC Protest, wearing police uniforms, and are visible in video recordings of the protest on the Date, copies of which can be provided to the Defendant upon request.
- (ii) Insofar as the Plaintiff is presently able to identify Police Officers with the following identification numbers:
  - A. VP 36817;
  - B. VP 38678;
  - C. VP 39294;
  - D. VP 39380;
  - E. VP 39917;
  - F. VP 40972;
  - G. VP 41276.
- (iii) The Plaintiff believes that the identities of the relevant officers are within the knowledge of, or reasonably ascertainable by, the Defendant. In addition to the usual records of employment, the Plaintiff believes that the Defendant has video recordings of the protest on the Date (including from the Police Evidence Gathering Team Operators; body worn camera

footage; and CCTV camera footage obtained from the Convention Centre and Melbourne City Council) copies of which will be discoverable.

8. The actions performed and the decisions made by the Police Officers relevant to the matters herein alleged were done in the performance or purported performance of their duties as Police Officers.
9. Pursuant to s 32 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the **Charter**), the Police Officers were required to interpret and apply their statutory powers and responsibilities under:
  - (a) the VPA;
  - (b) the *Crimes Act 1958* (Vic) (the **Crimes Act**),  
insofar as possible to do so consistently with their purpose, in a way which is compatible with human rights.
10. At all relevant times, the power of the Police Officers to arrest any person at the IMARC Protest without a warrant was prescribed by *Crimes Act* ss 457 - 459.
11. At all relevant times, the power of Police Officers to use force on the Plaintiff and Group Members was subject to and limited by the *Crimes Act* s 462A, which provides: “A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence”.
12. Further and in addition, at all relevant times, the Police Officers were required to abide by the Victoria Police Manual (**VPM**), which, relevantly provide that:
  - (a) **Safety** – while providing a policing service [police] members will, as far as practicable, identify hazards and mitigate risks to themselves and others.
  - (b) **Harm Minimisation** – the goal of policing activities is to minimise harm caused by [police] actions or the actions of others.
  - (c) When considering which tactical option to choose, members should be mindful that their goal is to minimise the overall harm caused by their actions or the actions of others.
  - (d) The choice of tactical option should always consider the nature of the task & the proportionality of the police response.

((a) – (d), **Operational Response Principles**).

- (e) *OC aerosols should only be used where there are reasonable grounds to believe the use is necessary and proportionate in situations:*
  - (i) *of violence or serious physical confrontation*
  - (ii) *where violent or serious physical confrontation is imminent*
  - (iii) *where a person is involved in violent or other physical conduct and likely to seriously injure themselves or result in suicide*
- (f) *Members “should not use OC aerosols when a person is only passively resisting e.g. simply hanging limp or refusing to comply with instructions only” ((e) – (f) **OC Aerosol Instructions**);*
- (g) *Where possible, violent confrontation and the use of force should be avoided. Any use of force must be justified and only to the level required to reasonably effect arrest or removal of persons (**Crowd Control Guidelines**).*

### **Particulars**

The Plaintiff relies on the VPM and guidelines in force at the Relevant Time Period including:

- (i) in respect of (a)-(d), the VPM Operational Safety and Use of Force, first issued 1 March 2018.
- (ii) in respect of (e)-(f), the VPM Operational Safety Equipment, first issued 1 March 2018 in particular 5.3 (OSE – Specific use of force requirements).
- (iii) in respect of (g), the VPM Procedures and Guidelines, Crowd Control first issued 22 February 2010 in particular 7.4 (use of force).

## **D. ASSAULT AND BATTERY**

### **D.1 The IMARC Conference**

- 13. The IMARC Conference has been held annually since 2015 and is Australia’s largest mining conference event.
- 14. Between 29 October 2019 to 31 October 2019 the IMARC Conference was held at venues across Melbourne, Victoria.
- 15. Prior to the Date, it was known by Victoria Police that protests were to be anticipated outside the IMARC Conference.



### **Particulars**

- (i) Protesters have demonstrated outside the IMARC Conference each year since its inception.
- (ii) On 13 August 2019, Yarra City Council passed a resolution unanimously supporting the Yarra residents who choose to support the IMARC Protest.

16. At around 8am on the Date, Victoria Police conducted a briefing at ORU office regarding the anticipated protests outside IMARC Conference venues on that Date.

### **Particulars**

The Plaintiff does not yet know, and so is not able to say, the contents of the briefing. Further particulars may be provided upon completion of interlocutory procedures including discovery.

17. On the Date, the IMARC Protest was held outside the Convention Centre.
18. On the Date it was lawful for the protesters including the Plaintiff and Group Members to attend, observe, and protest peacefully at the IMARC Protest.

### **Particulars**

- (i) *Inter alia*, the Plaintiff refers to:
  - A. his human rights to freedom of movement and peaceful assembly set out in the Charter ss 12, 16;
  - B. the absence of any legislative limitation on the right to exercise his democratic freedoms;
- (ii) In these pleadings, a reference to the protesters does not include a reference to the Climbers.

19. In the Relevant Time Period on the Date there were approximately 100 protesters at the IMARC Protest including the Plaintiff and Group Members.

20. At approximately 11.44am on the Date two Climbers scaled poles of the Convention Centre and unfurled a banner protesting the IMARC Conference.

### **Particulars**

- (i) The banner read, *inter alia*, "Blockade IMARC for Climate Justice".

- (ii) Darcy Vermont climbed the East pole (the **East Pole Climber**).
- (iii) Eva David Jones climbed the West pole (the **West Pole Climber**).

21. At this time, the Plaintiff and Group Members were around the base of the poles.

#### **Particulars**

- (i) The Plaintiff was standing in the vicinity of the West pole.
- (ii) Further particulars for the Group Members will be provided following the trial of the common issues.

22. At around 12.15 to 12.20pm, the Climbers started descending the poles.

## **D.2 The Advance**

23. At approximately 12.20pm on the Date, the PORT Tactical Commander directed the Police Officers to arrest the two Climbers when they dismounted from the poles for the summary offence of trespass (the **Arrest Order**).

#### **Particulars**

- (i) The Plaintiff refers to the contents of the Use of Force Form VP Form 237 completed on the Date at 1545 by member VP 40972 "The decision was made to arrest these offenders when they came down from the poles".
- (ii) Trespass was and is a summary offence under s 9 of the *Summary Offences Act 1966* (Vic).

24. At the time of the Arrest Order, there were protesters including the Plaintiff and Group Members between the Police Officers and the Climbers who were descending the poles.

25. At around 12.23pm, in response to and / or following the Arrest Order, Police Officers advanced on the protesters including the Plaintiff and Group Members in a coordinated formation from either side, yelling "move" (the **Advance**).

26. At the time of the Advance:
- (a) the protesters including the Plaintiff and Group Members were demonstrating or protesting about a particular issue within the meaning of s 6(5)(b) of the *Summary Offences Act*; and so
  - (b) the Police Officers did not have power to give the protesters including the Plaintiff and Group Members a direction to move on pursuant to s 6(1) of the *Summary Offences Act*.
27. Protesters including the Plaintiff and Group Members were pushed, crushed and grabbed by the Advance of the Police Officers.
28. The use of force by Police Officers on protesters including the Plaintiff and Group Members during the Advance (set out in paragraph 25):
- (a) involved unreasonable and disproportionate force;
  - (b) was not lawfully justified, including pursuant to s 462A of the *Crimes Act*;
  - (c) was an intentional act with an intent to cause injury to the Plaintiff and Group Members

#### **Particulars**

- (i) Victoria Police failed to abide by the Operational Response Principles, *inter alia*:
  - A. Police Officers engaged in a confrontation and / or used force when it was unnecessary to do so and could have reasonably been avoided.
  - B. Police Officers failed to adopt an approach which prioritised harm minimisation and public safety.
  - C. Police Officers failed to assess and consider the proportionality of the response to any risk posed by the Plaintiff and Group Members.
- (ii) Police Officers failed to abide by the Crowd Control Guidelines, *inter alia* that the use of force was not justified and in excess of the level reasonably required or lawfully allowed to effect the arrest or removal of the Climbers, the Plaintiff and / or the Group Members.
- (iii) The use of force was indiscriminate and not targeted.
- (iv) The use of force only commenced after the Climbers had started to descend the poles.

- (v) The use of force on the protesters including the Plaintiff and Group Members was disproportionate to any offence giving rise to the Arrest Order in respect of the Climbers, that is, the summary offence of trespass.
- (vi) The Police Officers did not suspect, reasonably or at all, that the protesters including the Plaintiff and Group Members were presently committing an offence or had committed indictable offences.
- (vii) The Police Officers did not inform the Plaintiff or the Group Members that they were suspected of or would be committing any identified offence.
- (viii) The use of force on the protesters including the Plaintiff or the Group Members was not in aid of any objective associated with arresting the protesters including the Plaintiff or the Group Members for the commission of any offence.
- (ix) The Police Officers did not have, and / or had not lawfully exercised, any power to direct the protesters including the Plaintiff and Group Members to move on.
- (x) The Plaintiff and Group Members had a lawful right to protest.
- (xi) The use of force failed to consider the Plaintiff and Group Members' right to protest, and / or their human rights, set out at PART E.
- (xii) The use of force was deliberately forceful physical contact.

### **D.3 Discharge of OC Foam**

29. As the East Pole Climber was descending, in the vicinity of the East pole, at around 12.23pm Police Officers:
- (a) pushed, crushed and grabbed protesters including the Group Members;
  - (b) held OC foam canisters up to the heads of protesters including the Group Members;
  - (c) discharged OC foam on protesters including the Group Members on at least three occasions.

#### **Particulars**

Insofar as the Plaintiff is presently able to say, one Police Officer who discharged OC foam is VP 40972.

30. As the West Pole Climber was descending, in the vicinity of the West pole, at around 12.24pm Police Officers:
- (a) pushed, crushed and grabbed protesters including the Plaintiff and Group Members;
  - (b) discharged OC foam on protesters including the Plaintiff and Group Members on at least three occasions.

#### **Particulars**

Insofar as the Plaintiff is presently able to say, Police Officers who discharged OC foam include VP 40972, VP 39380 and VP 41276.

31. The:
- (a) pushing, crushing and grabbing of; and
  - (b) use of OC foam on,
- protesters including the Plaintiff and Group Members set out in the preceding paragraphs 29 and 30 while the Climbers were descending:
- (i) Involved unreasonable and disproportionate force.
  - (ii) Was not lawfully justified, including pursuant to s 462A of the *Crimes Act*.
  - (iii) Was an intentional act with an intent to cause injury to the Plaintiff and Group Members.

#### **Particulars**

The Plaintiff refers to and repeats particulars to paragraph 29 and 30 and says further:

- (i) The Police Officers failed to abide by the OC Aerosol Instructions, *inter alia*:
  - A. The Police Officers discharged OC foam in circumstances where there was no existing or imminent violent or serious physical confrontation.
  - B. The Police Officers discharged OC foam in circumstances where the protesters including the Plaintiff and Group Members were refusing to comply with instructions only or passively resisting.
- (ii) The Police Officers ~~failed to consider~~ knew of the particular risks and harms of OC foam, which is a chemical agent which causes pain, burning, temporary blindness, burning in the lungs and shortness of breath.

- (iii) The use of OC foam on the protesters including the Plaintiff and Group Members did not reasonably aid any lawful objective. The Police Officers were not lawfully authorised to use OC foam, or other force, for the objective of coercing the protesters including the Plaintiff and Group Members to disperse.
32. The East Pole Climber left the IMARC Protest and was observed by Police Officers to run West along the bank of the Yarra River.
33. At around 12.25pm, the West Pole Climber was pulled from the pole and apprehended by Police Officers.
34. Following the descent and apprehension of the West Pole Climber, for a period of about one minute, Police Officers again deployed OC foam on the protesters including the Plaintiff and Group Members in the vicinity of West pole.

#### **Particulars**

- (i) Multiple Police Officers deployed OC foam, with at least nine instances of spraying.
  - (ii) As the Plaintiff was retreating, a Police Officer sprayed the back of the Plaintiff.
  - (iii) As the Plaintiff was retreating, at least two Police Officers sprayed OC foam in the air over above the heads of protesters including Group Members.
  - (iv) Insofar as the Plaintiff is presently able to say, Police Officers who discharged OC foam include VP 40972 and VP 39380.
  - (v) Further particulars for the Group Members will be provided following the trial of the common issues.
  - (vi) OC foam was sprayed directly at the Plaintiff's head.
  - (vii) The Police Officers knew of the particular risks and harms of OC foam, which is a chemical agent which causes pain, burning, temporary blindness, burning in the lungs and shortness of breath.
35. The use of OC foam on the protesters including the Plaintiff and Group Members after the West Pole Climber had descended and been apprehended, as set out in the preceding paragraph:
- (a) Involved unreasonable and disproportionate force.

- (b) Was not lawfully justified, including pursuant to s 462A of the *Crimes Act*;
- (c) Was an intentional act with intention to cause injury.

#### Particulars

The Plaintiff refers to and repeats the particulars subjoined to paragraph 29 ~~to 31 and 30~~ and says further that the additional use of OC foam could not be justified in association with the apprehension and arrest of the Climbers in circumstances where the East Pole Climber had left the IMARC Protest (to the knowledge of the Police Officers) and the West Pole Climber had been apprehended.

- 36. As protesters, including the Plaintiff and Group Members, were retreating, Police Officers continued to use force on the protesters including pushing, crushing and grabbing the Plaintiff and Group Members.
- 37. The assault on the protesters including the Plaintiff and Group Members while retreating set out in the preceding paragraph:
  - (a) Involved unreasonable and disproportionate force.
  - (b) Was not lawfully justified, including pursuant to s 462A of the *Crimes Act*.
  - (c) Was an intentional act with an intent to cause injury.

#### Particulars

- (i) The Plaintiff refers to and repeats the particulars subjoined to paragraph 34 and says further that the use of force while retreating is a factor informing aggravation of damages.
- (ii) The Police Officers knew of the particular risks and harms of OC foam, which is a chemical agent which causes pain, burning, temporary blindness, burning in the lungs and shortness of breath.

#### D.4 Assault and Battery of the Plaintiff and Group Members

- 38. In the premises, actions of the Police Officers using force set out:
  - (a) in the Advance (paragraphs 25 to 28);
  - (b) while the Climbers were descending (paragraphs 29 to 31);
  - (c) after the descent and apprehension of the West Pole Climber (paragraph 32 to 35);
  - (d) while the protesters were retreating (paragraph 36),

constituted:

- (i) a series of batteries and assaults by the Police Officers; and so
- (ii) police torts for which the Defendant is liable within the meaning of the VPA;
- (iii) intentional acts with an intent to cause injury

#### **Particulars**

- (i) The physical force was applied to the Plaintiff by the Police Officers when pushing, crushing and grabbing him.
- (ii) The Police Officers caused the Plaintiff an apprehension of fear when holding up OC canisters, deploying OC foam indiscriminately in his vicinity, and advancing on the protesters.
- (iii) The Plaintiff was hit by OC foam on his neck, back and the top of his head.
- (iv) The identities of the Police Officers involved in the assaults are known or should be ascertainable to the Defendant, and the Defendant is liable for their conduct pursuant to the provisions of the VPA.
- (v) Particulars for the Group Members will be provided following the trial of the common issues.
- (vi) The Police Officers knew of the particular risks and harms of OC foam, which is a chemical agent which causes pain, burning, temporary blindness, burning in the lungs and shortness of breath.

39. The actions of the Police Officers in committing the series of batteries and assaults caused injury to the Plaintiffs and Group Members.

#### **Particulars**

- (i) The Plaintiff refers to and repeats paragraph 3(e) in relation to the Injury suffered.
- (ii) Particulars for the Group Members will be provided following a trial of the common issues.

39A. The Plaintiff is not required to establish a significant injury within the meaning of Part VBA of the *Wrongs Act 1958 (Vic)* pursuant to section 28LC(2)(a) of the *Wrongs Act 1958 (Vic)*, because the conduct giving rise to the cause of action pleaded herein was done intentionally with an intent to cause injury to the Plaintiff.

#### **Particulars**



The Plaintiff relies on the matters pleaded in Section D herein (paragraphs 13 to 39 inclusive).

**E. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES**

40. At all material times and on the Date:
- (a) Victoria Police was a public authority within the meaning of s 4 of the Charter; and
  - (b) Police officers are public authorities for the purposes of the Charter.
41. Pursuant to s 38 of the Charter, it was and is unlawful for the Police Officers in the performance of their duties to:
- (a) act in a way that was incompatible with a human right;
  - (b) when making a decision, fail to give proper consideration to a relevant human right.
42. Accordingly, in responding to the IMARC Protest on the Date, Police Officers were obliged to give proper consideration to the human rights of the protesters including the Plaintiff and Group Members.
43. The actions and decisions of the Police Officers on the Date in:
- (a) planning the response to the IMARC Protest as alleged at paragraph 16;
  - (b) directing the Police Officers to immediately arrest the Climbers for trespass, in particular in circumstances where this led to the assault and battery of the protesters as alleged at paragraph 38;
  - (c) directing the protesters including the Plaintiff and Group Members to move as alleged in paragraph 25;
  - (d) physically advancing on the protesters as alleged in paragraphs 25 and 27;
  - (e) deploying OC foam as alleged at paragraphs 29, 30 and 34;
  - (f) pushing, grabbing and crushing the protesters as alleged at paragraphs 27, 29, 30 and 36,
- engaged and limited the following Charter rights of the protesters including the Plaintiff's and Group Members':
- (i) right to protection from cruel, inhuman or degrading treatment: s 10;
  - (ii) right to freedom of movement: s 12;
  - (iii) right to freedom of expression: s 15;
  - (iv) right to peaceful assembly: s 16(1);
  - (v) right to liberty and security of a person: s 21(1),
- (the **Human Rights**).

44. The limitations referred to in the preceding paragraph were not authorised by s 7 of the Charter and could not be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

#### **Particulars**

*Inter alia,*

- (i) the Plaintiff was exercising his democratic freedoms;
  - (ii) the Plaintiff did not initiate physical confrontation with the Police Officers;
  - (iii) the Plaintiff was not committing any offence and / or was not suspected of committing any offence;
  - (iv) the Police Officers were not limiting the Human Rights of the Plaintiff in order to effect his lawful arrest;
  - (v) the Police Officers had no reason to suspect or apprehend that the Plaintiff posed any risk to their safety so as to justify the serious limitation of his Human Rights;
  - (vi) deploying OC foam as a tool of pain and coercion is a serious limitation on Human Rights and requires particularly cogent and demonstrable justification;
  - (vii) particulars for the Group Members will be provided following a trial of the common issues.
45. The actions and decisions of the Police Officers on the Date set out at (a) to (f) of paragraph 43 failed to give proper consideration to the Human Rights of the protesters including the Plaintiff and Group Members and so were unlawful pursuant to s 38 of the Charter.
46. The Plaintiff and Group Members seek a relief or remedy against the Defendant who is liable for the tortious actions of the Police Officers, so pursuant to s 39(1) of the Charter are able to seek relief or remedy on a ground of unlawfulness arising because of the Charter.

#### **F. COMMON QUESTIONS OF LAW AND FACT**

The questions of law or fact which are common to the claims of the Plaintiff and each of the Group Members are:

47. What were the relevant roles, powers, responsibilities and statutory obligations of Police Officers in relation to their response to the IMARC Protest?

48. What briefing and instructions were given by Victoria Police to the Police Officers in advance of the IMARC Protest?
49. What right did the Plaintiff and Group Members have to attend, observe and protest peacefully at the IMARC Protest?
50. What factually took place at the IMARC Protest?
51. What directions and / or Arrest Order did the PORT Tactical Commander give to Police Officers at the IMARC Protest?
52. What actions did Police Officers take during the IMARC Protest, specifically:
  - (a) Did they Advance on the Plaintiff and Group Members including in a coordinated formation?
  - (b) Were they yelling “move”?
  - (c) Did they tell the Plaintiff and Group Members that they were hindering police?
  - (d) Were the Plaintiff and Group Members:
    - (i) pushed;
    - (ii) crushed;
    - (iii) grabbed?
  - (e) Was OC foam sprayed on the Plaintiff and Group Members?
  - (f) Was OC foam used against the Plaintiff and Group Members contrary to the:
    - (i) Operational Safety Principles;
    - (ii) Crowd Control Guidelines;
    - (iii) OC Aerosol Instructions?
  - (g) Did Police Officers continue to use force on the Plaintiff and Group Members including:
    - (i) spraying OC foam;
    - (ii) pushing, crushing and grabbing,while the Plaintiff and Group Members were retreating?
53. What directions and / or instructions were given to Police Officers in respect of the matters identified in the preceding paragraph?
54. What assessments did the PORT Tactical Commander make about:
  - (a) the risk of harm or injury to the Plaintiff and Group Members?
  - (b) any infringement of the Plaintiff’s and Group Members’ rights to protest in giving

the directions and / or instructions in the preceding paragraph?

55. What were the circumstances and timing in which any of the actions set out in paragraph 43 took place?
56. Did the Police Officers have the power to carry out the actions in paragraph 43?
57. Did the Police Officers have the power to use OC foam:
  - (a) as a means of coercive crowd control?
  - (b) in the absence of any risk of serious harm or injury?
  - (c) against the Plaintiff and Group Members, for the purpose of arresting the Climbers?
58. Did the Police Officers use OC foam:
  - (a) as a means of coercive crowd control?
  - (b) in the absence of any risk of serious harm or injury?
  - (c) against the Plaintiff and Group Members, for the purpose of arresting the Climbers?
59. Did any use of force by Police Officers on the Plaintiff and Group Members involve unreasonable and disproportionate force?
60. Was any use of force by Police Officers on the Plaintiff and Group Members lawfully justified?
61. To what extent does the Charter apply to the conduct of the Police Officers at the IMARC Protest?
62. Did the actions and decisions of Police Officers engage and limit any Charter rights of the Plaintiff and Group Members?
63. If the answer to paragraph 62 is yes, which Charter rights were engaged?
64. Could any such limitations be authorised by s 7 of the Charter?
65. Did the actions and decisions of the Police Officers fail to give proper consideration to the Human Rights of the Plaintiff and Group Members?

66. Do the Plaintiff and Group Members have a right to seek a declaration against:
- (a) Victoria Police;
  - (b) Police Officers,
- in respect of the tortious actions of the Police Officers?
67. Do the Plaintiff and Group Members have a right to seek relief or remedy against the Defendant pursuant to s 39(1) of the Charter?

**AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the Group Members:**

- A. Damages, including aggravated and exemplary damages.

**Particulars of aggravated and exemplary damages**

- (i) The conduct of the PORT Tactical Commander and the Police Officers in responding to the protest was in contumelious disregard of the Plaintiff's and Group Members' rights and sufficiently egregious to warrant an award of aggravated and exemplary damages so as to:
    - 1. mark the Court's disapprobation of the conduct of the Police Officers to protesters including the Plaintiff and Group Members, which caused unnecessary and unreasonable harm to the Plaintiff and Group Members posing no threat or danger;
    - 2. act as a deterrent and spur to the Defendant to ensure that Police Officers are properly trained, including in the appropriate use of force, deploying OC foam, and the Human Rights of protesters including the Plaintiff and Group Members, and understand their heavy responsibilities;
    - 3. recognise the unlawfulness of the conduct of the Police Officers.
- B. Declarations that actions and decisions of the PORT Tactical Commander and the Police Officers at the IMARC Protest in:
- (a) planning the response to the protest as alleged at paragraph 16;
  - (b) directing the Police Officers to immediately arrest the Climbers for trespass, in particular in circumstances where this led to the assault and battery of the Plaintiff and Group Members as alleged at paragraph 38;
  - (c) directing the Plaintiff and Group Members to move as alleged in paragraph 25;
  - (d) physically advancing on the Plaintiff and Group Members as alleged in paragraphs 25 and 27;
  - (e) deploying OC foam as alleged paragraphs 29, 30 and 34; and / or
  - (f) pushing, crushing and grabbing the Plaintiff and Group Members as paragraphs

27, 29, 30 and 36;

was:

- (g) not justified in law, failed to abide by the provisions of the VPM including the Operational Safety Principles, OC Aerosol Instructions and Crowd Control Guidelines and constituted assault and battery police torts within the meaning of the VPA; and
- (h) unreasonable in limiting the Human Rights of the protesters including the Plaintiff and Group Members and so were unlawful under s 38(1) of the Charter.

- C. Interest.
- D. Costs.
- E. Such further or other order as the Court determines is appropriate.

**FIONA FORSYTH QC**

**STELLA GOLD**

**Amended by Y AL-AZZAWI**

**DATED ~~1 September 2022~~ 3 December 2024**

Phi Finney McDonald

**Solicitors for the Plaintiff**