

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

BETWEEN:
NICOLA MAREE GOBBO

No of 2010

Plaintiff

AND

STATE OF VICTORIA
(and others according to the Schedule attached)

Defendants

STATEMENT OF CLAIM

Date of Document: 29 April 2010

Filed on behalf of: The Plaintiff

Prepared by:

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A. Parties

1. The Plaintiff:

- (a) has been at all relevant times up and until March 2009, practising as a barrister and solicitor of the Supreme Court of Victoria and as a member of the Victorian Bar;
- (b) has practised as a criminal defence barrister;
- (c) since on or around 4 March 2009, has been known as Witness 2 and/or Witness F;
- (d) suffers a significantly complex medical history with a need for ongoing specialist treatment;

PARTICULARS

The Plaintiff suffered a stroke in July 2004.

As a consequence of the stroke, she suffers from

- (e) has a close relationship with her elderly mother and her sister, Catherine Gobbo.
2. The First Defendant, the State of Victoria, is sued pursuant to the *Crown Proceedings Act 1958* (Vic).
3. The Second Defendant, (**Overland**), was :
- (a) at all material times prior to 3 March 2009, the Deputy Commissioner of Police (Crime) for the State of Victoria;
 - (b) at all material times prior to 3 March 2009, the Chair of the Steering Committee established by Victoria Police to investigate the murders of Terrence and Christine Hodson;
 - (c) from around 3 March 2009, the Chief Commissioner of Police for the State of Victoria.
4. The Third Defendant, Christine Nixon was, at material times until around 2 March 2009, the Chief Commissioner of Police for the State of Victoria.
5. At all material times,
- (a) Detective Senior Constable Cameron Davey (**Davey**), Detective Sergeant Sol Solomon (**Solomon**), Detective Senior Sergeant Shane O'Connell (**O'Connell**), Inspector Steve Smith (**Smith**),
Graham Evans-O Lloyd-DS Lloyd-DS Lloyd-DS
Graham Evans-O Graham Eve Graham Eve Superintendent Geoff Allway
(Allway), Detective Sergeant Tony Glenane (**Glenane**), Detective Sergeant Scott Wallace (**Wallace**) and Superintendent Rod Wilson (**Wilson**) were members of Victoria Police (**the police members**) ;
 - (b) each of the police members acted, in connection with the events, acts, facts, matters and circumstances alleged below which involve them or any of them:
 - (i) as officers and agents of the Defendants; and
 - (ii) in the course of their duty as members of Victoria Police.
 - (c) each of the Defendants, and the police members Davey, Solomon and O'Connell, knew the matters alleged in paragraph 1.

PARTICULARS

The Plaintiff repeatedly informed the police members of her medical needs and invited O'Connell, in particular, to speak with one of her treating specialists.

- (d) to exercise command, responsibility and supervision over matters relating to the murders of Terrence and Christine Hodson, which included the material facts alleged herein, the Defendants established and utilised a Steering Committee comprising senior members of Victoria Police and chaired by the Second Defendant until his appointment as Chief Commissioner of Police ("the Steering Committee").

PARTICULARS

The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly, through the Steering Committee, or through intermediate superiors. Such matters are within the knowledge of the Defendants and further particulars may be provided following discovery.

- (e) each of the police members reported, or ought to have done acting in good faith in the discharge of their duties, the events, acts, facts, matters and circumstances alleged below which involve them or any of them to the Defendants, whether directly or through intermediate superiors including but not limited to the Steering Committee by the established processes and procedures of reporting, accountability, authority, command and responsibility within the Victoria Police.

PARTICULARS

The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly or through intermediate superiors. Such matters are within the knowledge of the Defendants and further particulars may be provided following discovery.

- (f) further, or alternatively to the preceding sub-paragraph, the Defendants knew, or ought to have known had they properly discharged their duties in good faith, of the events, acts, facts, matters and circumstances alleged below through the established processes and procedures of reporting, accountability, authority, command and responsibility within the Victoria Police, including but not limited to the Steering Committee.

PARTICULARS

The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly or through intermediate superiors. Such matters are within the knowledge of the defendants and further particulars may be provided following discovery.

B. Requests of and Representations to the Plaintiff

6. On or around 5 March 2008, Davey and Solomon approached the Plaintiff to inquire whether the Plaintiff was prepared to assist in the investigation, in relation to the murders of Terrence Hodson and Christine Hodson, of the involvement of Paul Noel Dale (Dale).

PARTICULARS

The request was oral and was made in a conversation between Davey and Solomon on the one part and the Plaintiff on the other, which conversation was held at an office controlled by the Defendants, the address of which is known to the Defendants, the effect of which was as alleged.

7. On or around 17 November 2008 Davey and Solomon again approached the Plaintiff to inquire whether the Plaintiff was prepared to make a statement to them in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson.

PARTICULARS

The request was oral and was made in a conversation between Davey and Solomon on the one part and the Plaintiff on the other, which conversation was held at an office controlled by the Defendants, the address of which is known to the Defendants, the effect of which is as alleged.

8. On or around 6 December 2008, Davey and O'Connell again approached the Plaintiff to inquire whether the Plaintiff was prepared to make a statement to the Defendants in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson.

PARTICULARS

The request was oral and was made in a conversation between Davey and O'Connell on the one part and the Plaintiff on the other, which conversation was held at a hotel in the central business district of Melbourne, the address of which is known to the Defendants.

The substance of the conversation was that:

- (a) *O'Connell and Davey requested that the Plaintiff covertly record Dale at a meeting proposed to occur on 7 December 2008.*
- (b) *O'Connell told the Plaintiff that the Defendants had determined not to apply for a Surveillance Devices Act warrant.*
- (c) *O'Connell told the Plaintiff that without a warrant, the Plaintiff would be required to make a statement.*
- (d) *The Plaintiff informed O'Connell and Davey that if she agreed to covertly record Dale, it did not mean that she would agree to become a witness against him.*

- (e) *O'Connell stated to the Plaintiff that the listening device product would not be able to be used if the Plaintiff was not a witness as the Defendants had chosen not to obtain a warrant.*

9. The Plaintiff agreed to covertly record Dale, but no more.
10. On 7 December 2008, the Plaintiff met with Dale, at an address known to the Defendants, and recorded their conversation at the request of and for the Defendants' benefit (the Recording).

PARTICULARS

The Defendants are in possession of the listening device product and a transcript of the Recording.

11. On or around 7 December 2008, and after the Recording was obtained, Davey and O'Connell, again requested the Plaintiff make, in relation to the murders of Terrence and Christine Hodson, a statement to the Defendants in respect of the recording of Dale.

PARTICULARS

The request was oral and was made in a conversation between Davey and O'Connell on the one part and the Plaintiff on the other, which conversation was held at a hotel in the central business district of Melbourne, the address of which is known to the Defendants.

The substance of the conversation was that:

- (a) *O'Connell requested that the Plaintiff make a statement against Dale irrespective of the content of the Recording.*
- (b) *The Plaintiff asked O'Connell if he was aware of the significance for the professional and personal circumstances of the Plaintiff of what he was requesting that she do.*
- (c) *O'Connell stated to the Plaintiff that he did appreciate the significance of the request for her and, referring to his experience, he assured her that all issues the Plaintiff had in terms of becoming a witness would be accommodated.*
- (d) *O'Connell advised the Plaintiff that Overland was fully apprised of the detail of the Plaintiff's personal circumstances and her involvement (both to date and proposed) in the investigation.*
- (e) *The Plaintiff told O'Connell and Davey that she required time to consider the Defendants' request.*
- (f) *O'Connell requested that the Plaintiff not reveal the nature or existence of the Defendants' request that she make a statement against Dale to anyone.*

12. On or around 17 to 18 December 2008, O'Connell again made contact with the Plaintiff and again requested the Plaintiff make, in relation to the murders of Terrence and Christine Hodson, a statement to the Defendants in respect of the recording of Dale.

PARTICULARS

The request was oral and was made in a telephone conversation between O'Connell and the Plaintiff the substance of which was:

- (a) O'Connell told the Plaintiff that the material contained in the Recording was critical and unless the Plaintiff made a statement against Dale, the Recording would not be able to be used in evidence.*
- (b) O'Connell told the Plaintiff that absent the Plaintiff making a statement against Dale, the Defendants would not be in a position, at that time, to charge Dale with the murder of Terrence Hodson let alone prosecute him.*
- (c) The Plaintiff responded to O'Connell that she required further time to consider the Defendants' request and O'Connell again requested that the Plaintiff not reveal to anyone the nature or existence of the Defendants' request that she make a statement against Dale.*

13. By 23 December 2008, Davey, Solomon and O'Connell and the Defendants knew:

- (a) the Plaintiff's professional and relevant personal circumstances, including her health and medical condition;

PARTICULARS

Davey, Solomon and O'Connell and the Defendants knew:

- (a) the matters alleged in paragraph 1;*
 - (b) in relation to the Plaintiff's significantly complex medical history with a need for ongoing specialist treatment, that her health required that she receive continuing care from specialists who understood her medical history, with ready access to her medical records and that she received continuing care from specialists whose speciality was not readily accessible in all capital cities in Australia, let alone elsewhere .*
 - (c) the Plaintiff acted for major underworld crime figures;*
 - (d) the Plaintiff appeared to be successful in her practice;*
 - (e) where the Plaintiff lived and that she lived in her own home;*
 - (f) that the Plaintiff had familial, employment and financial relationships and friendships within the local community in Melbourne; and*
 - (g) that the Plaintiff had, by reason of her practice, a public profile amongst persons within or coming into contact with the criminal justice system, including occasional references to her practice in the media.*
- (b) that if the Plaintiff agreed to assist by making a statement to them in respect of the Recording of Dale there would be inevitable, significant, perilous, consequences for the Plaintiff including, but not limited to:
- (i) she could be killed;
 - (ii) her personal safety and well being would thereafter be substantially endangered and at grave risk;

- (iii) whether Dale was convicted or not, she would be continually living in a state of fear;
 - (iv) whether Dale was convicted or not, she would be continually living in circumstances where her personal safety and well being was compromised;
 - (v) her personal and professional life would be compromised in the following specific ways:
 - (a) she would be unable to continue to reside in her home;
 - (b) her family life would be compromised;
 - (c) she would be exposed to substantial levels of anxiety and stress;
 - (d) her practice as a criminal defence barrister would be irretrievably lost;
 - (e) her privacy, safety and security would be compromised if her identity was not protected;
 - (f) she would be unable to work in her chosen field of expertise in the future;
- (the risk and loss consequences); and,
- (c) that if the Plaintiff agreed to assist by making a statement to them in respect of the recording of Dale the Plaintiff would;
 - (i) be vulnerable to the risk and loss consequences; and,
 - (ii) not be in control of the risk and loss consequences;
 - (iii) be dependent upon the Defendants for her protection from the risk and loss consequences;
 - (d) the Plaintiff's circumstances were uniquely different from those of potential crown witnesses who were usually considered for witness protection.
- (collectively the Plaintiff's concerns)

PARTICULARS

The knowledge of the defendants arises:

- (a) *because of the matters alleged in paragraph 1;*
- (b) *because of the matters alleged in paragraph 5;*
- (c) *from the matters discussed in the conversations alleged in paragraphs 6 - 8, 11, 12 above;*
- (d) *from a telephone conversation between the Plaintiff and O'Connell, on around 23 December 2008 when she told O'Connell, and he acknowledged, that she was extremely reluctant to assist by making a statement to them in respect of the recording of Dale because there would be inevitable, significant, consequences for her, if she agreed to make a statement as requested, including but not limited to the matters alleged;*

- (e) *by reason of the knowledge and/or experience of the Defendants in relation to:*
- (i) *the Plaintiff;*
 - (ii) *Dale;*
 - (iii) *the nature and circumstances of the murders of Terrence and Christine Hodson;*
 - (iv) *the reaction or consequences which might be anticipated from persons who may have had occasion in the past or may have a need in the future to retain the Plaintiff as a criminal defence barrister to the circumstances of the assistance being sought from the Plaintiff to the prosecution of Dale;*
 - (v) *the possible attitude of persons convicted of serious crimes towards persons who may appear to them to be police informers;*
 - (vi) *the fact that the Plaintiff would potentially appear to be a police informer; and*
 - (vii) *witness protection programs.*
14. On or around 23 December 2008, in order to induce the Plaintiff to agree to make a statement against Dale, and if summonsed, to give evidence against him in any prosecution, the Defendants represented and warranted to the Plaintiff that
- (a) the Defendants acknowledged and accepted that the Plaintiff's concerns were valid and accurately stated;
 - (b) the Plaintiff would be afforded the highest level of attention by the Defendants;
 - (c) the Plaintiff could trust and rely upon the Defendants to address the Plaintiff's concerns;
 - (d) the Defendants were fully supportive of the investigation and prosecution of Dale, and were grateful and supportive of the Plaintiff's assistance in relation thereto;
 - (e) the Defendants would ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be "no worse off financially or otherwise" as a consequence of doing so;
 - (f) the Defendants would grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;
 - (g) that any issues the Plaintiff had in terms of becoming a witness "would be accommodated";
 - (h) that the Defendants would ensure that the Plaintiff's safety, security and well being together with her identity was protected by obtaining appropriate

suppression and non-publication orders for the duration of any prosecution proceedings against Dale;

- (l) the Defendants would consult with the Plaintiff prior to releasing information to Dale in the course of any prosecution if the release of that information would compromise the Plaintiff's safety, security or wellbeing;
 - (j) the Defendants would pay for the Plaintiff to be independently represented by Counsel of her choice in any court proceedings if representation became necessary as a result of the Plaintiff becoming a witness;
 - (k) there would be "no budgetary constraints" applicable to the Plaintiff in terms of providing the Plaintiff with compensation for the loss of her profession;
 - (l) the Plaintiff could trust and rely upon the Defendants to protect and nurture her future ongoing safety, security and welfare;
 - (m) the Plaintiff would be "looked after" by the Defendants, and by one or more of Davey, Solomon and O'Connell if the Plaintiff agreed to make a sworn statement against Dale thereby agreeing to become a witness in any prosecution of Dale;
 - (n) there were reasonable grounds for making the representations.
- (collectively the Representations)

PARTICULARS

The Representations in sub-paragraphs (a) to (m) were partly oral and partly implied. In so far as they were oral they were made in a telephone conversation between O'Connell and the Plaintiff, the substance of which was as alleged. Further, the Representations were made by the Defendants by O'Connell by reason of:

- (i) *the matters alleged in paragraph 5;*
 - (ii) *in the telephone conversation alleged, O'Connell in response to the Plaintiff's concerns, told the Plaintiff that he had spoken previously to Smith and Overland about the Plaintiff's concerns, and that he had Overland's express authority to address the Plaintiff's concerns.*
 - (iii) *the matters alleged in paragraphs 8, 10 and 11;*
- The Representations in sub-paragraph (n) were implied in all the circumstances in which the express oral representations were made.*

15. On 1 January 2009, in order to induce the Plaintiff to agree to make a statement against Dale, and if summonsed, to give evidence against him in any prosecution, the Defendants acknowledged, accepted and repeated on behalf of the Defendants the accuracy and effect of the Representations (the Acknowledgement).

PARTICULARS

The Acknowledgement was oral and was made in a conversation at a meeting between O'Connell Davey and Solomon, on behalf of the Defendants, and the Plaintiff, which conversation was held at a private residence outside of

Melbourne, the address of which is known to the Defendants and the substance of which is as alleged.

16. Further, in engaging in the conduct alleged in paragraphs 14 and 15, each of Davey, Solomon and O'Connell warranted, as was the fact, his, and each of their, authority to:
- (a) make the Representations and the Acknowledgement on behalf of the Defendants;
 - (b) undertake, on behalf of the Defendants, an obligation by the Defendants to protect her interests and, specifically, to protect her from the risk and loss consequences; and
 - (c) undertake, on behalf of the Defendants, an obligation by the Defendants to make good the Representations.
- (the warranty of authority of Davey, Solomon and O'Connell).

C. The Contract Claim

The Agreement

17. Acting:
- (a) on the faith and truth of the Representations and the Acknowledgement, and induced thereby;
 - (b) in consideration of the Defendants accepting an obligation to protect her interests and, specifically, to protect her from the risk and loss consequences;
 - (c) on the fact of the authority of Davey, Solomon and O'Connell on behalf of the Defendants ;
- on 1 January 2009 the Plaintiff agreed to make a statement against Dale, and if summonsed, to give evidence against him (**the Agreement**).

PARTICULARS

The Agreement is partly oral and partly to be implied.

- A. *In so far as it is oral, the Plaintiff refers to and repeats paragraphs 1 to 15 hereof.*
- B. *In so far as it is to be implied, it is implied by reason of the relationship and the circumstances of the dealings between the parties and in order to give business efficacy to the Agreement.*

18. There were terms of the Agreement that:

- (a) The Plaintiff would make a statement against Dale and, if summonsed, give evidence at any proceeding brought against him by the Defendants;
- (b) The Plaintiff would continue to assist the Defendants with their inquiries into the murders of Terrence and Christine Hodson and any related matters or investigations;
- (c) The Defendants would provide the Plaintiff with appropriate ongoing witness management and support and do all other necessary, and reasonable things to ensure the safety of the Plaintiff or any of the Plaintiff's immediate family members;
- (d) The Defendants would protect the Plaintiff's ongoing security and welfare;
- (e) The Defendants would arrange and pay for the Plaintiff to be relocated to a mutually acceptable address (including any necessary transportation) other than her residential address once Dale was arrested and charged;
- (f) The Plaintiff would reside at an address other than her residential address for a period to be determined in consultation with the Defendants, subject to such address taking into account the Plaintiff's individual needs;
- (g) The Plaintiff would have access to the Victorian Witness Protection Program with such flexibility as was required to accommodate the Plaintiff's individual and particular needs;
- (h) The Defendants would in good faith negotiate the particular terms upon which the Plaintiff would be offered witness protection which accommodated her individual and particular needs;
- (i) The Defendants would provide such financial compensation as was necessary to ensure that the Plaintiff would be [REDACTED] " as a result of providing the requested assistance, including, [REDACTED]
[REDACTED]
[REDACTED]
- (j) The Defendants would provide the Plaintiff with financial support in the interim and during witness protection including, without limitation, payment of expenses such as mortgage, lease and other debt payment obligations;
- (k) The Defendants would take all possible steps to protect the Plaintiff's safety, security and wellbeing together with the Plaintiff's identity by seeking and maintaining a suppression and non-publication order for the duration of the Dale prosecution;

- (l) The Defendants would consult with the Plaintiff prior to releasing information to Dale in the course of any prosecution if the release of that information would compromise the Plaintiff's safety, security or wellbeing;
- (m) The Defendants would pay for the Plaintiff to be independently represented by appropriate Counsel of her choice in any court proceedings if representation became necessary as a result of the Plaintiff becoming a witness against Dale;
- (n) The Defendants would in good faith negotiate the financial compensation for the Plaintiff to which the Defendants had agreed and the Plaintiff would supply such information and substantiation of her financial claim as the Defendants reasonably required;
- (o) The Defendants acknowledged that the Plaintiff was dependent upon their full performance of the Agreement in good faith and was vulnerable to loss and damage both to her person and her economic position should she not receive full and proper protection of her interests;
- (p) The Plaintiff and Defendants would cooperate with each other and do all things necessary to permit each other to discharge their obligations and perform their duties under the Agreement;
- (q) The Defendants would, at all times, act in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement; and,
- (r) Notwithstanding that the terms of the Agreement would be confirmed in writing by the Defendants within a period of approximately two to three weeks, it was the intention of the Plaintiff and the Defendants that they be immediately bound by the Agreement.

PARTICULARS

The Plaintiff refers to and repeats the particulars to paragraph 17 and says further that the terms alleged in sub-paragraphs (a) - (o), and (r) were partly oral and partly to be implied and the terms alleged in sub-paragraphs (p) and (q) were implied, with such implication arising from the nature and content of the express terms and the need to give commercial and practical efficacy to them. Further the term alleged in sub-paragraph (r) is implied by the requirement of the Defendants that the Plaintiff provide the statement which she agreed to give immediately upon agreeing to do so, and its use by the Defendants, and their agents, before any written confirmation of the Agreement was executed and by the fact that the Plaintiff made the statement in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson and in respect of the Recording of Dale on 7 December 2008.

D. Conduct following the Agreement

19. Between 20 January 2009 and 16 February 2009, notwithstanding that the Agreement had not been confirmed in writing, the terms of the Representations, the Agreement and the Acknowledgement were confirmed (the Confirmation).

PARTICULARS

The Confirmation was partly in writing and partly oral.

- (a) *In so far as the Confirmation is in writing, it is contained in a document entitled "Witness Proposal" which document was prepared by O'Connell, on behalf of the Defendants and given to the Plaintiff at a meeting attended by O'Connell and the Plaintiff at a beach in Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 20 January 2009.*
A copy of the said document is in the possession of the solicitors for the Plaintiff and may be inspected by prior appointment.
- (b) *In so far as the Confirmation was oral, it was comprised in the following conversations:*
- (i) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a beach in Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 20 January 2009, the substance of which is as alleged;*
 - (ii) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the vicinity of the Westgate Bridge, the particular address of which is known to the Defendants at 9.30 am on 31 January 2009, the substance of which is as alleged;*
 - (iii) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the vicinity of the Westgate Bridge, the particular address of which is known to the Defendants at 10.00 am on 1 February 2009, the substance of which is as alleged;*
 - (iv) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the suburb of East Melbourne, the particular address of which is known to the Defendants after 11.30 am on 9 February 2009, the substance of which is as alleged;*
 - (v) *Conversation between the Plaintiff and Catherine Gobbo on the one part and O'Connell on behalf of the Defendants, on the other part which conversation was held at hotel in the central business district of Melbourne, the particular address of which is known to the Defendants at 7.00 pm on 11 February 2009, the substance of which is as alleged; and*
 - (vi) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a car park in the suburb of Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 16 February 2009, the substance of which is as alleged.*

20. Following the Agreement:

(a) the Plaintiff:

- (i) as she had done on and from the date of obtaining the Recording, refrained from disclosing to anyone, other than those persons sanctioned by the Defendants, the assistance being provided by her in relation to the Defendants' investigation into Dale, as directed and requested by the Defendants;
- (ii) on 1 and 2 January 2009, made a statement to Victoria Police against Dale;

PARTICULARS

The statement was taken at an address known to the Defendants and in the presence of officers or agents of the Defendants, whose identity is known to the Defendants. The Defendants are in possession of the original of the Plaintiff's statement.

- (iii) on 7 January 2009, signed the statement against Dale;
- (iv) between around early February 2009 and 10 March 2009, at the request of the Defendants, returned all current or continuing briefs and ceased accepting any new briefs;
- (v) on or around 10 March 2009, and at the request of the Defendants, ceased practising as a member of the Victorian Bar and had her practising certificate and professional indemnity insurance suspended.
- (vi) on or around 14 March 2009, and at the direction of the Defendants, terminated the lease on her chambers at Crockett Chambers, level 7, 530 Lonsdale Street, Melbourne.
- (vii) from 4 March 2009 ceased living at her residential address in Melbourne, which address is known to the Defendants, and shortly thereafter on 14 March 2009 [REDACTED]

- (viii) between 4 March 2009 and 24 November 2009 resided, at the direction of the Defendants and upon arrangements being made by them for the Plaintiff to do so, at [REDACTED]

- (ix) did not disclose [REDACTED] at which she was primarily residing between March 2009 and October 2009 to any person other than with the express consent of and at the direction of the Defendants.
- (x) did not disclose [REDACTED] at which she was residing to any person other than with the express consent of and at the direction of the Defendants.
- (xi) between 14 March 2009 and 24 November 2009, [REDACTED]
[REDACTED]
- (xii) between 4 March 2009 and 24 November 2009, [REDACTED]
[REDACTED]
- (xiii) from 4 March 2009 only had contact with former clients or associates of former clients with the sanctioned prior consent and at the direction of the Defendants.
- (xiv) from 4 March 2009, ceased contact with any media organisation and, if contacted by any media organisation, reported such contact to the Defendants.
- (xv) on and from 14 March 2009, only [REDACTED] with the prior express consent of the Defendants and upon the Defendants making arrangements for the Plaintiff to do so.
- (xvi) on 22 May 2009 [REDACTED]
[REDACTED] for the purpose of giving effect to the terms of the Agreement referred to in paragraph 18(b) hereof.
- (xvii) on 20 August 2009 [REDACTED]
[REDACTED] for the purpose of giving effect to the Agreement referred to in paragraph 18(b) hereof.
- (xviii) between 4 March 2009 and 2 December 2009, maintained contact with the Defendants via mobile phone sms messaging to inform the Defendants of the Plaintiff's movements at regular intervals throughout each and every day.

PARTICULARS

The Plaintiff is in possession of a copy of all sms text messages, and copies can be provided to the Defendants upon request.

- (xix) between 14 March 2009 and 20 November 2009, provided to the Defendants copy invoices for all accounts the subject of the term of the Agreement alleged in paragraph 18(j) above.
- (xx) on 10 February 2009, provided to O'Connell on behalf of the Defendants, a copy of the Plaintiffs 2006/2007 tax return in response to a request by O'Connell; and
- (xxi) between 16 March 2009 and 4 December 2009 [REDACTED]

[REDACTED]

(b) the Defendants have:

- (i) provided the Plaintiff with a form of witness support and management from 4 March 2009 until 20 November 2009 (as detailed in sub-paragraph (a) of this paragraph), when such support and management was terminated by the Defendants as alleged below in paragraph 29.
- (ii) arranged, booked and paid for accommodation for or on behalf of the Plaintiff [REDACTED] between 4 March 2009 and 23 November 2009.

PARTICULARS

The details of the accommodation bookings are known to the Defendants.

- (iii) arranged, booked and paid for [REDACTED] on behalf of the Plaintiff between 14 March 2009 and 26 October 2009.

PARTICULARS

The details of the flight bookings are known to the Defendants.

- (iv) paid the amounts referred to in paragraph 20(a)(xxi) hereof to the Plaintiff.
- (v) arranged, booked and paid for [REDACTED] for the Plaintiff between 4 March 2009 and 24 November 2009.

PARTICULARS

The Defendant is in possession of all tax invoices for all bookings. Further particulars can be provided upon request following discovery.

- (vi) between late February 2009 and 12 June 2009 provided to the Plaintiff various documents purporting to set out the agreement but which do not record nor correspond with the Agreement referred to in paragraph 17 and 18 above.

PARTICULARS

The documents were prepared by the Defendants' solicitors who are in possession of a copy of each document. Further particulars will be provided following discovery.

- (vii) on 4 March 2009, applied for and obtained, in respect of the Plaintiff, a suppression and non-publication order from this Court (Cummins J) pursuant to sections 18 and 19 of the Supreme Court Act 1986 and the inherent jurisdiction of the Court.
- (viii) In or around late March 2009, took steps to enforce the Order of Cummins J by having removed from the world wide web a copy of the reasons for decision of Warren CJ proceeding number 1415 of 2009.
- (ix) between around 28 March 2009 and 5 April 2009, O'Connell, Smith, Graham Eve and Lloyd-DS travelled to Bali Indonesia where the Plaintiff was holidaying with her sister, Catherine Gobbo, purportedly to provide witness support.
- (x) In or around late March early April 2009, [REDACTED]

PARTICULARS

- (xi) between around March 2009 and 16 December 2009, [REDACTED]
- (xii) on or around 8 May 2009 served upon Dale a hand up brief which made disclosures in relation to the Plaintiff.

PARTICULARS

The disclosures include the identity of the Plaintiff, the release to Dale of information concerning the Plaintiff's medical condition as alleged in paragraph 1(d) and the location of her treating specialist.

The Plaintiff is presently unable to give further particulars as the hand up brief is in the possession of the Defendants. Further particulars will be provided following discovery.

- (xiii) on 31 May 2009, between 1 June 2009 and 13 June 2009 and between 15 June 2009 and 16 June 2009 provided the Plaintiff with [REDACTED]
[REDACTED]
- (xiv) on 6 August 2009, applied for and obtained in respect of the Plaintiff a suppression and non-publication order from this Court (Byrne J) pursuant to sections 18 and 19 of the Supreme Court Act 1986 and the inherent jurisdiction of the Court.
- (xv) in or around late August 2009 took steps to enforce the Order of Byrne J by having removed from the world wide web a copy of his Honour's reasons for decision in proceeding number 1415 of 2009.
- (xvi) in or around late September 2009 took steps to enforce the Order of Byrne J by having removed from the world wide web a copy of the reasons for decision of Maxwell P, Nettle JA and Lasry AJA in proceeding number 773 of 2009 .
- (xvii) in early October 2009 offered to the Plaintiff accommodation [REDACTED]
[REDACTED]
- (xviii) on 23 November 2009, reimbursed the Plaintiff's Victorian Racing Club membership fees for 2009/2010 in the sum of \$380.00, which membership the Plaintiff was precluded from utilising by the Defendants due to the operation of the Agreement.
- (xix) on 23 November 2009, reimbursed to the Plaintiff the cost of tickets purchased to attend the Pink concert in Melbourne in July 2009 in the sum of \$344.75, which event the Plaintiff was precluded from attending by the Defendants due to the operation of the Agreement.
- (xx) on 23 November 2009, [REDACTED]
[REDACTED]
the address of which is known to the Defendants.
- (xxi) on or around 6 December 2009 offered to the Plaintiff [REDACTED]
[REDACTED]

- (xxii) Between around 1 February 2010 and mid April 2010 released to Dale documents and items relating to the Plaintiff in answer to a Witness Summons served by Dale on Overland.

PARTICULARS

A copy of the Witness Summons is in the possession of the solicitors for the Plaintiff and may be inspected by appointment. The Plaintiff is presently unable to give further particulars as a copy of all documents produced to Dale in answer to the Witness Summons are in the possession of the Defendants. Further particulars will be provided following discovery.

- (xxiii) on or around 20 February 2010 released to Dale in an open court a document purportedly recording the monies spent by the Defendants on the Plaintiff from 4 March 2009 (Chart of Monies).

PARTICULARS

A copy of the Chart of Monies is in the possession of the solicitors for the Plaintiff and may be inspected by appointment.

- (xxiv) on 11 March 2010 applied unsuccessfully to maintain the suppression and non-publication order in relation to the Plaintiff made by Cummins J and continued by Byrne J before Magistrate Reardon pursuant to section 126 of the Magistrates' Court Act.
- (xxv) between 9 March 2010 and mid April 2010 instructed solicitors and Counsel to make claims for public interest immunity in relation to documents and items sought by Dale from the Defendants which related directly to the Plaintiff and her ongoing security, safety and wellbeing.
- (xxvi) between 9 March 2010 and mid April 2010, in the course of making claims for public interest immunity, repeatedly referred to the Plaintiff as a police informer in open court.

21. The conduct alleged in the preceding paragraph was in performance, or pretended performance, of the Agreement.
22. Between January and June, 2009, alternatively by no later than 7 September, 2009, the Defendants knew, or ought to have known:

- (a) that the dealings between them and the Plaintiff, alleged above and in the particulars to paragraph 34 below, were subjecting the Plaintiff to significant stress;
- (b) that the Plaintiff's medical condition was aggravated by that stress.

PARTICULARS

The Defendants knew the matters alleged by reason that such matters were known to Allway and O'Connell (and the Plaintiff refers to and repeats paragraph 5) because:

- (a) *they observed the demeanour of the Plaintiff when dealing with her and that she was under stress was obvious to any observer;*
- (b) *police officers are trained to make observations of demeanour; and,*
- (c) *during the discussions which occurred at this time, the Plaintiff complained to them, including in the presence of their solicitors, the Victorian Government Solicitors' Office, that the Defendants refusal to be flexible in these negotiations to find a common solution was stressing her and that as a result of that stress her health was suffering.*

The Plaintiff informed Overland directly of these matters in correspondence to him of 7 September, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

23. In early June, 2009, the Defendants confirmed again that the Plaintiff was then at high risk of harm, requiring ongoing security protection and assistance.

PARTICULARS

Letter to the Plaintiff from Deputy Commissioner Walshe on behalf of the Defendants on 4 June, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

The Plaintiff otherwise refers to and repeats paragraph 20(b) above.

24. From 16 June, 2009, the Plaintiff was treated as an inpatient for approximately 17 days and the Defendants knew from the time of her discharge, alternatively by no later than 7 September, 2009, that her medical condition required:

- (a) continuing access to outpatient services, including physiotherapy and occupational therapy;
- (b) certainty in terms of accommodation and daily routine; and
- (c) that she be in an environment with ongoing daily emotional and physical support from close family members.

PARTICULARS

The Defendants knew the matters alleged by reason that such matters were known to O'Connell because:

- (a) *he was so informed by the Plaintiff; and*
- (b) *he was provided, at his request, with a copy of the Plaintiff's discharge summary from hospital.*

The Plaintiff informed Overland directly of these matters in correspondence to him of 7 September, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

25. Notwithstanding the knowledge alleged in the preceding paragraph, the Plaintiff was, on her discharge from hospital on 2 July 2009, relocated by the Defendants to [REDACTED] that day.
26. In late August, 2009, the Defendants further confirmed that the Plaintiff was then at extreme risk of harm, requiring ongoing security protection and assistance.

PARTICULARS

Letter to the Plaintiff from Deputy Commissioner Walshe on behalf of the Defendants on 26 August, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

27. Between:
- (a) late July and October, 2009; and
 - (b) late October 2009 and 22 April 2010,
- and following on, from and/or in consequence of:
- (i) the circumstances and manner in which the Defendants sought to protect the Plaintiff's security, safety and wellbeing;
 - (ii) the matters alleged in paragraphs 22 to 26 above;
 - (iii) the matters alleged in paragraphs 20(b)(xvii) and 20(b)(xxi) to (xxvi) above; and
 - (iv) the matters alleged in paragraph 34 below,
- the Plaintiff's health deteriorated markedly.

PARTICULARS

- (a) *Between July 2009 and October 2009, the Plaintiff's [REDACTED] became non-responsive to the Plaintiff's existing medication regime requiring repeated attendances on her specialist on 10 July 2009, 7 August 2009, 4 September 2009 and 13 October 2009.*
- (b) *The Plaintiff is on medication and suffers significant issues with [REDACTED].*
- (c) *By 28 September 2009, the Plaintiff had developed [REDACTED]*
- (d) *Between 28 October 2009 and 22 April 2010, the Plaintiff was hospitalised and had 7 operations to treat [REDACTED]*

(e) On 1 February 2010 the Plaintiff commenced treatment with a psychologist to assist with the management of the Plaintiff's [REDACTED]

(f) [REDACTED]

(g) On 11 March 2010 the Plaintiff was admitted to hospital [REDACTED]

28. From late July 2009 and at all material times thereafter, the Defendants knew or ought to have known:

- (a) that the Plaintiff's health had deteriorated and was continuing to do so;
- (b) that the dealings between them and the Plaintiff as alleged in paragraphs 20(b) above and 34 below, were subjecting the Plaintiff to significant stress;
- (c) the Plaintiff's various medical conditions were aggravated by that stress.

PARTICULARS

The Plaintiff refers to and repeats paragraphs 22 to 26 above. The Defendants knew the matters alleged by reason that such matters were known to:

- (a) O'Connell and Smith because they were informed of the Plaintiff's medical state by Catherine Gobbo in a telephone call on 3 December 2009;
- (b) O'Connell and Smith because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 7 December 2009 at the Plaintiff's hospital;
- (c) Solomon because he observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at meetings held on 21 December 2009, 29 December 2009 and 1 January 2010 at the Plaintiff's hospital;
- (d) O'Connell, ^{Graham Eve} and ^{Lloyd-DS} because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 4 February 2010;
- (e) O'Connell because he was advised in writing of the Plaintiff's health in an email from Catherine Gobbo to him dated 23 December 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (f) O'Connell, Smith, Solomon and ^{Graham Eve} because they were advised in writing of the Plaintiff's health in an email from Catherine Gobbo to them dated 15 January 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (g) Solomon and Davey because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 8 February 2010 at the offices of the Plaintiff's solicitors;

- (h) Solomon because he attended the Magistrates' Court of Victoria at Melbourne on 16 March 2010 at which time the Plaintiff's specialists gave evidence as to her medical conditions and the effect upon these of stress.

Further, the Defendant's solicitors were specifically informed of the Plaintiff's medical conditions in:

- (i) a meeting attended by Mr McRae and Ms Parsons on behalf of the Defendants and Mr Waters and Ms Catherine Gobbo on behalf of the Plaintiff on 4 January 2010; and
- (ii) letters sent by the Plaintiff's solicitors to the Defendants' solicitors dated 29 January 2010, 4 February 2010, 8 February 2010, 26 February 2010, 3 March 2010, 9 March 2010, 23 March 2010, 30 March 2010, 6 April 2010, 9 April 2010 and 22 April 2010.

The Plaintiff informed Overland directly of these matters in correspondence to him dated 21 January 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

29. On 20 November 2009, the Defendants terminated such support and management as was being provided by the Defendants.

PARTICULARS

The termination was in writing and was contained in three text messages sent by Smith, ^{Lloyd-DS} and ^{Graham Evans-O} each as agent for the Defendants to the Plaintiff on 21 November 2009, the substance of which is as alleged.

The Plaintiff is in possession of the text messages, a copy of which can be provided to the Defendants upon request.

30. Between 27 October 2009 and 19 April 2010, and in the knowledge of the matters referred to in paragraphs 27 to 28 hereof, the Defendants maintained that it was essential for management of the risk of harm to the Plaintiff that she:

- (a) enter into the Witness Protection Program on the terms stipulated by the Defendants; and
- (b) be located in accommodation at least 60 minutes from the central business district of Melbourne (CBD), alternatively "a sufficient distance" from the CBD.

PARTICULARS

The Plaintiff refers to:

- (a) An email from Wilson to Catherine Gobbo dated 5 November 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (b) A telephone call between Smith and O'Connell on behalf of the Defendants and Catherine Gobbo on behalf of the Plaintiff on 3 December 2009;

(c) Letters from the Defendants' solicitors dated 10 March 2010, 11 March 2010 and 1 April 2010.

31. Further, between 19 April 2010 and 22 April 2010, and in the knowledge of the matters referred to in paragraphs 27 and 28 hereof, the Defendants maintained that they could only manage the risk of harm to the Plaintiff if she agreed to relocate to accommodation within a proximate location to the CBD with 24 hour a day protection by armed SOG officers.

PARTICULARS

The Plaintiff refers to a letter from her solicitors to O'Connell dated 20 April 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

E. Termination of Agreement

32. In or around late November 2009 and early December 2009, the Defendants evinced an intention no longer to be bound by the terms of and thereby repudiated the Agreement (the repudiation).

PARTICULARS

The repudiation was in writing and was contained in a letter from the Defendants' solicitors to the Plaintiff's solicitors dated 14 December 2009. A copy of the letter is in the possession of the solicitors for the Plaintiff and may be inspected by prior appointment. Further, and alternatively, the Plaintiff refers to and relies on the matters alleged in paragraph 34 below as evincing an intention on the part of the Defendants, by no later than the date alleged, not to perform the agreement in accordance with its terms and to no longer to be bound by the Agreement.

33. The Plaintiff, as she is entitled to do, accepted, alternatively hereby accepts the repudiation as rescinding the Agreement.

F. Breach of Agreement

34. In breach of the Agreement, the Defendants have:
- (a) not provided the Plaintiff with appropriate and/or ongoing witness management and support;

PARTICULARS

During the period between March 2009 and October 2009 when the Plaintiff was located [REDACTED]

- (a) *she was without any form of police assistance other than a periodical visit by Lloyd-DS, Graham Eva and/or O'Connell which*

attendances were conducted [REDACTED]

- (b) she was left without any point of contact [REDACTED]
- (c) she was instructed by O'Connell that in the event of a security incident the plan agreed by Victoria Police was for her to "run for your life";

The Plaintiff is currently without any form of witness management and support other than being directed to telephone "000" in the event of an emergency. The Plaintiff refers to a letter from the Defendants' solicitors to her solicitors dated 1 April 2010, a copy of which is in the possession of the Plaintiff's solicitors where it may be inspected by appointment.

The Plaintiff otherwise refers to and repeats paragraph 29 hereof.

- (b) terminated, from 20 November 2009 without justification, the provision of any ongoing witness management and support;
- (c) failed to appropriately protect the identity of the Plaintiff;

PARTICULARS

The failure or refusal of the Defendants to appropriately protect the identity of the Plaintiff is evidenced by the following circumstances:

- (a) On 8 May 2009 served on Dale a hand up brief which contained inappropriate and unnecessary disclosures in relation to the Plaintiff.
- (b) On 20 February 2010, released to Dale in an open court the Chart of Monies which document contained inappropriate and unnecessary disclosures in relation to the Plaintiff.
- (c) On 11 March 2010, and as a result of the use by the Defendants of limited evidence rather than all of the evidence that was available to them, the suppression and non-publication order previously ordered by Cummins J on 11 March 2009 and continued by Byrne J on 6 August 2009 was revoked.
- (d) At no time since 11 March 2010 have the Defendants renewed an application for a suppression and non-publication order in relation to the Plaintiff.
- (e) Between 9 March 2010 and mid April 2010, in the course of making claims for public interest immunity, repeatedly referred to the Plaintiff as a police informer in open court.
- (f) Between 1 February 2010 and mid April 2010 failed and refused to provide the Plaintiff with access to Independent Counsel to protect her interests in the course of the Dale committal hearing.

- (d) failed and/or refused to negotiate in good faith with the Plaintiff for admission into the Witness Protection Program;

PARTICULARS

The failure or refusal of the Defendants to negotiate in good faith with the Plaintiff for admission into the Witness Protection Program (Witsec) is evidenced by the following circumstances:

- (i) *The Plaintiff was informed by O'Connell, at or about the time of Dale's arrest, that Victoria Police considered that the risk to her "was at the highest level" and in this context and absent any particular threat, discussions about entering Witsec were held with O'Connell on behalf of the Defendants.*
- (ii) *The Plaintiff stated that she was prepared to enter into Witsec, not just for the protections offered to a witness in terms of personal safety but also, and importantly, for the protection to her arising from the benefits to the prosecution in disclosure obligations in respect of witnesses under protection but was not prepared to subject herself to a strict regime, inappropriate having regard to her personal circumstances.*
- (iii) *O'Connell repeated (as alleged above) that there would be an unprecedented degree of flexibility as to how Witsec would operate to accommodate her circumstances.*
- (iv) *In early February, 2009, the Plaintiff met with O'Connell, Glenane and Wallace [REDACTED] on two occasions, and each of these police members demonstrated a lack of understanding of the personal circumstances of the Plaintiff. Further in this and subsequent discussions no flexibility at all in the manner in which the Witsec program might operate in connection with the Plaintiff was evident and no proposals were forthcoming from Witsec to deal with important practical matters including, but not limited to:*
 - (a) the impracticality of a change in identity;*
 - (b) health concerns including access to ongoing medical treatment with current specialist doctors;*
 - (c) relocation;*
 - (d) property investments;*
 - (e) business interests of the Plaintiff;*
 - (f) academic qualifications;*
 - (g) employment prospects;*
 - (h) taxation matters.**(the practical matters)*
- (v) *Thereafter, between February and July, 2009, the Plaintiff dealt with Allway, [REDACTED]. Allway, notwithstanding that there is no statutory, or practical, essential requirement for a change of identity [REDACTED] and was unable to offer any proposal as to how practical matters would operate if the Plaintiff were in Witsec.*
- (vi) *In particular, the Defendants failed or refused to negotiate, in good faith and with flexibility as to:*
 - (a) medical treatment;*
 - (b) the relationship between management of her chronic medical condition and contact with close family and friends, particularly for physical, mental and emotional support;*
 - (c) [REDACTED]*
 - (d) [REDACTED]*

(e) *the lack of practical utility in protection for the Plaintiff if another person determined to harm her from [REDACTED]*

(f) *the quantum of any compensation to be provided by the Defendants to the Plaintiff.*

Each of these matters was discussed with Allway, Wilson, O'Connell and Smith.

(vii) *Numerous suggestions of alternate proposals, including mediation, which were made by the Plaintiff and were rejected outright by the Defendants, who maintained [REDACTED]*

(viii) *[REDACTED] in a letter to the Plaintiff from Deputy Commissioner Walshe on 4 June, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.*

(ix) *Negotiations were suspended by the Defendants following a meeting on 12 June, 2009 between Allway, and David Ryan and Isobelle Parsons (from VGSO) on behalf of the Defendants, of the one part and the Plaintiff and her sister, Catherine Gobbo of the other part over the issue of calculation of lost income for the Plaintiff and recording of the manner in which it was to be calculated and the issue of disclosure of VGSO and associated Victoria Police files to Dale. The meeting was suspended to enable the Defendants' representatives to discuss the issue further with Overland.*

(x) *The Plaintiff spoke on two occasions with Wilson (Overland's Chief of Staff), in the presence of O'Connell, in or about August, 2009 when, her concerns, requests and proposals were restated, the substance of which is set out above. Although Wilson appeared flexible in negotiations with the Plaintiff, thereafter Allway on behalf of the Defendants, reverted to the inflexible and inappropriate requirements of the defendants (as set out above).*

(xi) *On 7 September, 2009, the Plaintiff made direct representations to Overland by letter of that date, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment. In response the Defendants maintained their position and negotiations continued to their unsuccessful conclusion by correspondence. The Plaintiff refers to a letter to the Plaintiff from Deputy Commissioner Walshe on 14 September, 2009, and letter from Plaintiff to Overland on 28 September, 2009, copies of which are in the possession of the solicitors for the Plaintiff where they may be inspected by appointment.*

Notwithstanding that the Plaintiff remained of the view that there were real benefits for her in participating in Witsec [REDACTED] no suitable proposal was put to her or accepted by Witsec prior to the matters alleged in paragraph 32 and the benefits to the Plaintiff of participation in Witsec have now substantially been lost, particularly since the service of subpoenas for the production of documents in the Dale committal.

(e) *not provided the Plaintiff with access, on flexible terms, to the Witness Protection Program;*

PARTICULARS

The Defendants have refused to provide any reasonable flexibility in terms of access to Witness Protection and, in particular, insist unreasonably and unjustifiably, that:

- (a) the Plaintiff must [REDACTED] as a condition of witness protection;*
- (b) the Plaintiff must [REDACTED]*
- (c) the Plaintiff must release and discharge the Defendants from the claims being made in this proceeding.*

- (f) not provided any or any adequate protection for the Plaintiff's ongoing security and welfare;

PARTICULARS

The Plaintiff refers to and repeats paragraphs 20(b) to 31 above and sub-paragraphs (a) to (e) of this paragraph.

- (g) not provided financial compensation to ensure that the Plaintiff would be "[REDACTED]" as a result of providing the requested assistance;
- (h) not taken all reasonable steps to give effect to the Agreement;
- (i) not, at all times, acted in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement.

PARTICULARS

Apart from the matters of payment alleged in paragraph 20(b), the Defendants refuse to negotiate, or to pay, proper financial compensation to the Plaintiff and the Plaintiff refers to paragraphs 53 to 56 below.

G. Estoppel

- 35. Further and alternatively, by the conduct of the Defendants alleged above in paragraphs 6 - 16 above, the Defendants fostered and engendered in the Plaintiff the assumption and/or expectation that an immediately enforceable Agreement existed between them, alternatively, a particular legal relationship would exist between them from which the Defendants would not be free to withdraw.

PARTICULARS

The Agreement which the Plaintiff assumed and expected would exist between the Plaintiff and the State of Victoria and/or the Chief Commissioner of Police is the Agreement alleged in paragraph 17 above. The particular legal relationship which the Plaintiff assumed and expected would exist between the Plaintiff and the State of Victoria and/or the Chief Commissioner of Police was one which was characterised by the obligations described in paragraph 18 above.

36. The Defendants induced the Plaintiff to adopt the assumption and/or expectation alleged in the preceding paragraph and she did so.

PARTICULARS

The inducement of the Defendants was constituted by the conduct alleged in paragraphs 14 to 16 above.

37. The Plaintiff acted or abstained from acting as alleged in paragraphs 20(a) above in reliance on the assumption and/or expectation alleged in paragraph 35 above.
38. The Defendants knew and intended that the Plaintiff would act or abstain from acting as alleged in the preceding paragraph.

PARTICULARS

The knowledge and intention of the Defendants is to be inferred from the matters alleged constituted by the conduct alleged in paragraphs 13 to 16, and 19 above.

39. If the assumption and/or expectation alleged in paragraph 35 above is not fulfilled, the Plaintiff acted to her detriment as follows:
- (a) the Plaintiff is now in, and remains in, a position of imminent, and grave, personal danger;
 - (b) the Plaintiff's identity as a prosecution witness against Dale has become widely known;
 - (c) the Plaintiff has been stigmatised as a police informer;
 - (d) the Plaintiff has been and remains reliant upon the Defendants for the supervision and management of her interests, in particular her physical protection and safety, and her financial well being;
 - (e) the opportunity for conduct by the Plaintiff of her profession, in the manner intended by her, has been irretrievably compromised;
 - (f) the Plaintiff has suffered financial loss;
 - (g) the Plaintiff's personal circumstances have been irretrievably compromised;
 - (h) the Plaintiff has been placed in a position of extreme personal stress and pressure;
 - (i) the health of the Plaintiff has been damaged and she has suffered personal injury.

PARTICULARS

The Plaintiff refers to and repeats the matters alleged in paragraphs 20(a), 21 - 28, and 53 to 56 hereof. Further particulars will be provided.

40. The Defendants did not at any relevant time act to avoid the detriment suffered by the Plaintiff by:
- (a) withdrawing or correcting the Representations and the Acknowledgement;
 - (b) taking any step which was adequate in the circumstances to warn the Plaintiff that the assumption or expectation alleged in paragraph 35 above was false.
41. In the premises, it is unconscionable for the Defendants not to honour the assumption and/or expectation alleged in paragraph 35 above and thereby to occasion detriment to the Plaintiff and the Defendants are, in equity, estopped and precluded from asserting that that an immediately enforceable Agreement exists between them as alleged in paragraph 17 above, alternatively, a particular legal relationship exists between them from which the Defendants would not be free to withdraw which is characterised by the obligations described in paragraph 18 above.
42. By reason of their conduct, the Defendants are liable:
- (a) to act to fulfil the assumption and/or expectation alleged in paragraph 35 above; and/or
 - (b) pay equitable compensation or damages to the Plaintiff.

PARTICULARS

The Plaintiff refers to and repeats the matters alleged in paragraphs 53 to 55 (inclusive) below and the particulars sub-joined thereto.

H. The Fiduciary Duty Claim

43. Further and or alternatively, since at least 17 November 2008, alternatively 7 December 2008, alternatively 1 and 2 January 2009, alternatively 7 January 2009, a relationship existed between the Plaintiff and Defendants by which the Defendants assumed fiduciary obligations to the Plaintiff in connection with the making by the Plaintiff of the statement to Victoria Police against Dale and giving evidence in court and all necessary consequences, alternatively the economic consequences, of that conduct (the fiduciary relationship).

PARTICULARS

In the premises alleged above in paragraphs 13 to 17 above;

- (i) *the Plaintiff entered into a relationship of trust and confidence with the Defendants by which the Plaintiff placed trust in the Defendants to protect her interests in terms of personal well being, security and financial position; and,*

- (ii) *the Defendants accepted that confidence and assumed a position which obliged them to act on behalf of the Plaintiff in the protection of those interests; and,*
- (iii) *the manner in which the powers and duties of the Defendants were to be exercised and discharged for the protection of the Plaintiff's interests was not a matter which the Plaintiff had agreed or defined and the Defendants were to be independent of and not controlled by the Plaintiff in exercising and discharging such powers and duties in the protection of her interests.*

In taking the benefit of the conduct of the Plaintiff in making the statement to Victoria Police against Dale and agreeing to give evidence in court as the Defendants have done, the Defendants have ascended to a special relationship of influence, power, and dominance, in connection with the affairs of the Plaintiff due to:

- (a) *the Plaintiff being dependant on the Defendants for the provision of witness protection, management and support;*
- (b) *the Plaintiff being dependant on the Defendants doing all things necessary to ensure her ongoing and future safety and that of her immediate family members;*
- (c) *the Plaintiff being reliant on the Defendants for the provision of financial support due to the loss of the Plaintiff's professional career.*

44. By the fiduciary relationship between the Plaintiff and the Defendants, the Defendants owed to the Plaintiff in equity and at law a fiduciary duty:

- (a) to act at all times towards the Plaintiff in good faith and with fidelity in respect of their dealings with her including:
 - (i) the performance of the Agreement; and
 - (ii) the circumstances surrounding the Agreement; or
 - (iii) the matters alleged in paragraph 14.
- (b) to act in the best interests of the Plaintiff;
- (c) to take or exercise the degree of care and skill in the execution and discharge of the fiduciary relationship which would be exercised by a prudent person, alternatively a prudent police officer, who had accepted the obligation to protect the physical, personal and economic safety, security, welfare and interests of another who had reposed trust and confidence in that prudent person for that purpose;
- (d) disclose to the Plaintiff, all matters facts and circumstances which in good faith and fidelity were required to be disclosed to the Plaintiff concerning:
 - (i) the performance of the Agreement;
 - (ii) the circumstances surrounding the Agreement; or
 - (iii) the matters alleged in paragraph 14.

(the fiduciary duties)

PARTICULARS

The said fiduciary duties are imposed upon the Defendants as a matter of equity and common law and arise from the fiduciary relationship pleaded.

45. Wrongfully and in breach of the fiduciary duties alleged in the preceding paragraph, the Defendants have:

- (a) not acted at all times towards the Plaintiff in good faith and with fidelity in respect of their dealings with her including:
 - (i) the performance of the Agreement; and
 - (ii) the circumstances surrounding the Agreement; or
 - (iii) the matters alleged in paragraph 14;

PARTICULARS

The failure or refusal of the Defendants to act in good faith and with fidelity in respect of their dealings with the Plaintiff in relation to the Agreement is evidenced by the following:

- (a) *the manner in which the Defendants have managed the Plaintiff's security and safety, including her accommodation. The Plaintiff refers to and repeats paragraph 20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29, 30, 31 and 34 hereof.*
- (b) *the fact that the Defendants have, since 20 November 2009, left the Plaintiff without any form of witness management or support including any form of protection. The Plaintiff refers to and repeats paragraphs 29 to 31 and 34(a) hereof.*
- (c) *the failure by the Defendants to protect the Plaintiff's identity by:*
 - (i) *obtaining a suppression and non publication order. The Plaintiff refers to and repeats paragraph 20(b)(xxiv) hereof;*
 - (ii) *ensuring that previous suppression and non publication orders were complied with. The Plaintiff refers to and repeats paragraph 20(b)(viii), 20(b)(xv) and 20(b)(xvi) hereof.*
 - (iii) *making unnecessary disclosure to Dale of information concerning the Plaintiff. The Plaintiff refers to and repeats paragraphs 20(b)(xii) and 20(b)(xxv).*
- (d) *the reliance by the Defendants on terms which did not correspond with those which formed the Agreement as pleaded in paragraph 18 hereof. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof,*
- (e) *the imposition by the Defendants of budgetary constraints in terms of providing the Plaintiff with compensation under the Agreement. The Plaintiff refers to and repeats paragraph 34(e) hereof.*
- (f) *the Defendants' failure to accommodate the Plaintiff's medical needs by:*
 - (i) *insisting that the Plaintiff be located interstate from July 2009 to October 2009 and thereafter at least a 60 minute drive from her medical practitioners. The Plaintiff refers to and repeats paragraphs 22 to 28 and paragraphs 30 to 31 hereof;*
 - (ii) *serving the Plaintiff with a Witness Summons on 8 February 2010 to attend court and give evidence in March 2010 at Dale's committal hearing in the knowledge that the Plaintiff was not medically fit to do so. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof;*

- (iii) *refusing to seek and/or obtain an adjournment to Dale's committal hearing. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof;*
- (iv) *opposing the Plaintiff's application to be excused from answering the summons on the grounds that she was medically unfit;*
- (v) *refusing or neglecting to provide the Plaintiff with certainty as to her future safety, living arrangements, well being and/or security. The Plaintiff refers to and repeats paragraph 34(e) and 34(f) hereof.*

- (b) not acted in the best interests of the Plaintiff;

PARTICULARS

The Plaintiff refers to and repeats the particulars joined to sub-paragraph (a) above.

- (c) not exercised the degree of care and skill in the execution and discharge of the fiduciary relationship which would be exercised by a prudent person, alternatively a prudent police officer, who had accepted the obligation to protect the physical, personal and economic safety, security, welfare and interests of another who had reposed trust and confidence in that prudent person for that purpose;

PARTICULARS

The failure or refusal of the Defendants to exercise the degree of care and skill in the execution and discharge of the fiduciary relationship in respect of their dealings with the Plaintiff in relation to the Agreement is evidenced by the following:

- (a) *the fact that the Defendants have, since 20 November 2009, left the Plaintiff without any form of witness management or support including any form of protection. The Plaintiff refers to and repeats paragraphs 20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29, 30, 31 and 34 hereof.*
- (b) *failing to take reasonable steps to provide adequate and proper witness management or support including protection.*
- (c) *the failure by the Defendants to take reasonable steps protect the Plaintiff's identity by:*
 - (i) *obtaining a suppression and non publication order. The Plaintiff refers to and repeats paragraph 20(b)(xxiv) hereof;*
 - (ii) *ensuring that previous suppression and non publication orders were complied with. The Plaintiff refers to and repeats paragraphs 20(b)(viii), 20(b)(xv) and 20(b)(xvi) hereof;*
 - (iii) *making unnecessary disclosure to Dale of information concerning the Plaintiff. The Plaintiff refers to and repeats paragraphs 20(b)(xii) and 20(b)(xxv) hereof.*
 - (iv) *repeatedly referring to the Plaintiff in court proceedings concerning Dale as a police informer. The Plaintiff refers to and repeats paragraphs 20(b)(xxvi) and 34(d) hereof.*

- (d) *failing to take reasonable steps to develop and offer to the Plaintiff witness protection suitable for her personal circumstances, particularly, the*

[REDACTED] *The Plaintiff refers to and repeats paragraph 34(e) hereof.*

- (e) *failing to take reasonable steps to accommodate the Plaintiff's medical needs by:*

- (i) *insisting that the Plaintiff be* [REDACTED]

[REDACTED] *The Plaintiff refers to and repeats paragraphs 22 to 28 and 30 to 31 hereof;*

- (ii) *serving the Plaintiff with a Witness Summons on 8 February 2010 to attend court and give evidence in March 2010 at Dale's committal hearing in the knowledge that the Plaintiff was not medically fit to do so. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (iv) *refusing to seek and/or obtain an adjournment of Dale's committal hearing. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (v) *refusing or neglecting to provide the Plaintiff with certainty as to her future safety, living arrangements, well being and/or security. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof.*
- (f) *the Plaintiff refers to and repeats paragraph 52 below.*

- (d) *not disclose to the Plaintiff, all matters facts and circumstances which in good faith and fidelity were required to be disclosed to the Plaintiff concerning:*

- (i) *the performance of the Agreement;*
- (ii) *the circumstances surrounding the Agreement; or*
- (iii) *the matters alleged in paragraph 14.*

PARTICULARS

The Plaintiff refers to and repeats the particulars joined to sub-paragraph (c) above.

I. The Negligence Claim

46. Further, and alternatively, it was at all material times reasonably foreseeable that the Plaintiff would suffer loss and damage, including economic loss, if the Defendants:

- (a) *failed to exercise reasonable care, skill and diligence in making to the Plaintiff the representations alleged in paragraphs 14 and 15 above;*
- (b) *having taken from the Plaintiff a statement against Dale and having her agreement to give evidence at any proceeding against him, failed to exercise due*

care skill and diligence in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (g), (i), and (j) to (m) above.

47. At all times material, it was reasonable for the Plaintiff to rely upon the exercise of reasonable care, skill and diligence by the Defendants:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
 - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (g), (i), and (j) to (m) above;
- and the Plaintiff did so.

PARTICULARS

The Plaintiff refers to and repeats the matters alleged in paragraph 17.

48. Further, at all times material, the Defendants knew, or ought to have known that the Plaintiff was relying upon the exercise of reasonable care, skill and diligence by them and their employees and agents, including the police members:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
 - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (m) above.

PARTICULARS

The Plaintiff refers to and repeats the matters alleged in paragraph 13.

49. Further, at all times material, the Plaintiff was vulnerable to a want of care skill and diligence by the Defendants:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
 - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (m) above:

in that the Plaintiff became, and remains, having given a statement against Dale and having her agreement to give evidence at any proceeding against him unable to protect herself against such consequences and losses, both personal and economic.

PARTICULARS

The Plaintiff does not possess the resources to evaluate and protect her personal safety, nor is she able to determine whether the Defendants were exercising reasonable care, skill and diligence in undertaking the tasks of and incidental to the matters the subject of the representations and the matters alleged in paragraphs 18 (c) to (m) above.

50. Further, at all times material, the Defendants had:
- (a) control over and or the power of control over;

- (b) assumed responsibility for;
all of the tasks of and incidental to:
- (c) making the representations alleged in paragraphs 14 and 15 above;
- (d) the performance of the matters alleged in paragraphs 18 (c) to (m) above.

PARTICULARS

The control over and the assumption of responsibility by the Defendants is to be inferred from the matters alleged in paragraphs 13, 14, 19, 20, 22 - 28 above.

- 51. By reason of the matters alleged in paragraphs 46(b) above, the Defendants owed to the Plaintiff a duty:
 - (a) to exercise reasonable care skill and diligence in making the Representations and Acknowledgement alleged in paragraphs 14 and 15 above;
 - (b) to perform all of the matters alleged in paragraphs 18 (c) to (m) above with reasonable care skill and diligence,
so as to avoid loss and damage to the Plaintiff.
- 52. The Defendants breached the duty of care to the Plaintiff alleged in the preceding paragraph in that:
 - (a) the Representations were false;

PARTICULARS

- (i) *the Plaintiff was not afforded the highest level of attention by the Defendants;*
- (ii) *the Plaintiff could not trust and rely upon the Defendants to address the Plaintiff's concerns and the Defendants did not do so;*
- (iii) *the Defendants did not ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be [REDACTED] as a consequence of doing so and the Plaintiff is substantially worse off than she would have been;*
- (iv) *the Defendants did not grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;*
- (v) *the Defendants did not accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, or a protected witness;*
- (vi) *the Defendants have imposed budgetary, or other, constraints in terms of providing the Plaintiff with compensation for the loss of her profession and the Plaintiff has not been compensated at all;*
- (vii) *the Plaintiff has not been able to, and has not trusted or relied upon the Defendants to protect and nurture her future ongoing safety, security and welfare;*

- (viii) *the Plaintiff has not been looked after by the Defendants, and by one or more of Davey, Solomon and O'Connell despite the Plaintiff agreeing to make a sworn statement against Dale and agreeing to become a witness in any prosecution of Dale;*
- (ix) *there were no reasonable grounds for making the representations or any of them.*

(b) the Defendants:

- (i) *failed to protect the Plaintiff's ongoing safety, security and welfare and do all other reasonable things that the Defendants considered necessary to ensure the safety of the Plaintiff or any of the Plaintiff's immediate family members;*

PARTICULARS

The Plaintiff refers to and repeats the matters alleged in paragraph 34 above.

- (ii) *failed at all times, to act in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement;*

PARTICULARS

The Plaintiff refers to and repeats paragraph 45(a) hereof.

- (iii) *failed or refused or neglected to take all reasonable steps to give effect to the Agreement;*

PARTICULARS

The failure of the Defendants to take all reasonable steps to give effect to the Agreement is evidenced by the Defendants:

- (a) *refusal or failure to provide to the Plaintiff a document which accords with the matters alleged in paragraph 18 hereof. The Plaintiff refers to and repeats paragraph 20(b)(vi) hereof;*
- (b) *reliance, alternatively insistence on terms which did not correspond with those which formed the Agreement as alleged in paragraph 18. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof;*
- (c) *imposition of budgetary constraints in terms of providing the Plaintiff with compensation under the Agreement. The Plaintiff refers to and repeats paragraph 34(e) hereof;*
- (d) *failure to protect the Plaintiff's identity. The Plaintiff refers to and repeats paragraphs 20(b)(xxiv), 20(b)(xv), 20(b)(xvi), 20(b)(xii) and 20(b)(xxv) hereof;*
- (e) *failure to provide to the Plaintiff appropriate witness management and support. The Plaintiff refers to and repeats paragraphs 29, 34(a) and 34(d) hereof; and*
- (f) *manner in which they have managed the Plaintiff's security and safety. The Plaintiff refers to and repeats paragraphs*

20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29 to 31 and 34 hereof.

- (iv) failed to ensure that the Representations were accurate, reasonably based, and could be complied with at the time they were made and failed to correct the Representations;

PARTICULARS

The failure of the Defendants to ensure the Representations were accurate and could be complied with is evidenced by the following:

- (i) *that the Plaintiff was not afforded the highest level of attention by the Defendants;*
 - (ii) *that Plaintiff could not trust and rely upon the Defendants to address the Plaintiff's concerns and the Defendants did not do so;*
 - (iii) *the Defendants did not ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be "[REDACTED]" as a consequence of doing so and the Plaintiff is substantially worse off than she would have been;*
 - (iv) *the Defendants did not grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;*
 - (v) *the Defendants did not accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, or a protected witness;*
 - (vi) *the Defendants have imposed budgetary, or other, constraints in terms of providing the Plaintiff with compensation for the loss of her profession and the Plaintiff has not been compensated at all;*
 - (vii) *the Plaintiff has not been able to, and has not trusted or relied upon the Defendants to protect and nurture her future ongoing safety, security and welfare;*
 - (viii) *the Plaintiff has not been looked after by the Defendants, and by one or more of Davey, Solomon and O'Connell despite the Plaintiff agreeing to make a sworn statement against Dale and agreeing to become a witness in any prosecution of Dale.*
- (v) failed to act in the best interests of the Plaintiff in dealing with their disclosure obligations in connection with the prosecution of Dale;

PARTICULARS

The failure of the Defendants to act in the best interests of the Plaintiff in dealing with their disclosure obligations in connection with the prosecution of Dale is evidenced by the following:

- (a) *On or around 28 January 2010 Dale served a Witness Summons on the Second Defendant seeking the production of various documents and items some of which related to the Plaintiff;*
 - (b) *Between 28 January 2010 and 22 April 2010, the Second Defendant responded to Dale's Witness Summons by releasing at least 18 volumes of material and the Chart of Monies. Further particulars will be provided following discovery;*
 - (c) *The Defendants neglected, failed or refused to seek instructions from the Plaintiff as to matters directly affecting the Plaintiff's security, safety and wellbeing prior to responding to the Witness Summonses in the manner in which they chose to as referred to in the preceding sub-paragraph;*
 - (d) *The Defendants have repeatedly and incorrectly labelled the Plaintiff a police informer in open court during the hearing of Dale's committal in March 2010 thereby compromising the Plaintiff's security, safety and wellbeing.*
- (vi) *failed to have regard to the information in their possession when serving on the Plaintiff on 8 February 2010 a summons to give evidence at the committal of Dale in March, 2010;*

PARTICULARS

- (a) *On 7 December 2009, O'Connell and Smith attended upon the Plaintiff when she was an inpatient in hospital [REDACTED] where they observed, as they are trained to do, the Plaintiff's demeanour and that she was generally unwell and under stress as was obvious to any observer;*
- (b) *Between 23 December 2009 and 4 January 2010, Solomon attended upon the Plaintiff on 3 separate occasions when she was an inpatient in hospital [REDACTED] where Solomon observed the Plaintiff's demeanour and that she was generally unwell and under stress;*
- (c) *On 29 January 2010, the Plaintiff's solicitors advised the Defendants' solicitors of the state of the Plaintiff's health and the fact that she was not medically fit to give evidence at Dale's committal hearing in March 2010. The Plaintiff refers to a letter from Piper Alderman to VGSO dated 29 January 2010, a copy of which is in the Plaintiff's solicitors' possession and may be inspected by appointment;*

- (d) On 4 February 2010, the Plaintiff and her sister Catherine met with O'Connell, ^{Lloyd-DS} and ^{Graham Eva} at which time the Plaintiff explained the nature of her medical condition including that:
- (i) the conduct of the Defendants had severely aggravated her [REDACTED];
 - (ii) the Plaintiff required [REDACTED] surgery for [REDACTED];
 - (iii) The Plaintiff was [REDACTED];
 - (iv) the Plaintiff required ongoing daily home nursing care;
 - (v) the Plaintiff would likely require further surgery in relation [REDACTED];
 - (vi) the Plaintiff was under significant stress.
- (e) On 5 February 2010, ^{Graham Eva} and ^{Lloyd-DS} in a telephone attendance on the Plaintiff conceded that the Plaintiff was not medically fit to give evidence at Dale's committal in March 2010;
- (f) On 8 February 2010, Davey and Solomon attended a meeting with the Plaintiff, her sister Catherine Gobbo and the Plaintiff's solicitors at which time, and in the knowledge of the matters referred to at sub-paragraphs (a) to (e) above, served the Plaintiff with a witness summons to attend and give evidence at Dale's committal hearing in March 2010; and
- (g) Between 29 January 2010 and 16 March 2010, the Defendants refused, failed or neglected to withdraw or have withdrawn the Witness Summons and/or to make arrangements for Dale's committal hearing to be adjourned so as to facilitate the Plaintiff's medical needs.

(vii) failed to disclose to the Plaintiff, all matters facts and circumstances which good faith and fidelity required the Defendants to disclose to the Plaintiff concerning:

- (i) the performance of the Agreement; and
- (ii) the circumstances surrounding the Agreement.

PARTICULARS

The Plaintiff refers to and repeats the particulars joined to paragraph 45(a) hereof.

J. Loss and Damage

53. Further or alternatively, but for the wrongful conduct of the Defendants as alleged in paragraphs 32, 34, 41, 45, and 52 above, the Plaintiff would:
- (a) not have entered into the Agreement; or
 - (b) not have acted or abstained from acting as alleged in paragraph 20(a) above in reliance on the assumption or expectation alleged in paragraph 35 above and
 - (c) not have agreed to make a statement against Dale and/or become a witness against him; and
 - (d) have continued, successfully, to practise law as a member of the Victorian Bar specialising in criminal law, practice and advocacy.

54. By reason of agreeing to and making a statement against Dale and/or agreeing to give evidence against him, the Plaintiff's:

- (a) health has been damaged and she has suffered personal injury; and

PARTICULARS

The Plaintiff has suffered significant stress which has exacerbated pre-existing conditions.

The Plaintiff refers to and repeats paragraphs 1(d), 24 and 27 hereof. Further particulars will be provided prior to trial.

- (b) reputation as a criminal defence barrister is lost and she is no longer able to attract work as such or practise law as a criminal defence barrister;

PARTICULARS

As a consequence of:

- (a) recording Dale;
 - (b) agreeing to and making a statement against Dale;
 - (c) providing assistance to the Defendants in relation to the investigation of Dale in relation to the murders of the Hodsons;
 - (d) being labelled by the Defendants in open Court as a police informer;
 - (e) the inappropriate and unnecessary disclosures made by the Defendants in the hand up brief and in the course of the Dale committal,
- the Plaintiff has lost and cannot in the future maintain a practice as a criminal defence barrister.*

- (c) safety, welfare, security and personal circumstances have been compromised.

55. By reason of the matters aforesaid, the Plaintiff has been deprived of the benefit of the Agreement and has suffered loss and damage.

PARTICULARS

- (a) The Plaintiff's date of birth is [REDACTED].

- (b) *Loss of Income:*
- (i) *the sum of approximately \$250,000 per annum and continuing commencing 1 January 2009.*
- (c) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]
- (v) [REDACTED]
- (d) *Out of Pocket Expenses:*
- (i) *medical expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$40,000 (net of private health insurance and Medicare rebates);*
- (ii) *dental expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$15,000 (net of private health insurance and Medicare rebates);*
- (iii) *prescribed pharmaceutical expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$20,000 (net of private health insurance and Medicare rebates);*
- (iv) *lease hire payments incurred by the Plaintiff since 1 January 2009 for a [REDACTED] Mercedes Benz from 1 January 2009 and continuing, currently in the sum of approximately \$1,642 per month;*
- (v) *lease payments incurred by the Plaintiff for the period 1 January 2009 to 30 June 2009 for the Plaintiff's chambers located at Crockett Chambers, in the sum of approximately \$13,170;*
- (vi) *removalists expenses incurred by the Plaintiff on or around 10 March 2009 in relation to closing the Plaintiff's chambers, in the sum of \$500.00;*
- (vii) *body corporate and utility expenses from 1 January 2009 incurred by the Plaintiff for her residential address in the sum of approximately \$10,000;*
- (viii) *mortgage repayments incurred by the Plaintiff since 1 January 2009 for the Plaintiff's residential address in the sum of approximately \$3,200 per month;*
- (ix) *telephone expenses incurred from 1 January 2009 in relation to the Plaintiff's former mobile phone connected on the Optus Network in the sum of approximately \$1,500;*

- (x) car registration for the Plaintiff's [REDACTED] Mercedes Benz in the sum of approximately \$650;
- (xi) contents insurance incurred since 1 January 2009 for the Plaintiff's residential address in the sum of approximately \$1,200;
- (xii) continuing legal costs incurred by the Plaintiff since 11 February 2009 in relation to the Agreement; and
- (xiii) interest paid on a line of credit in the sum of approximately \$20,000 which the Plaintiff utilises to fund the expenses set out in sub-paragraph (e)(i) to (xii) above.

Further particulars of loss and damage will be provided following discovery and prior to trial.

56. Further, the loss and damage suffered by the Plaintiff had been aggravated.

PARTICULARS

The Plaintiff's loss has been aggravated and her feelings have been injured by the manner in which the Defendants have wronged her and continue so to do:

- (a) knowingly exposing, and continuing to expose, the Plaintiff to fear, apprehension, risk and stress;
- (b) the refusal of the Defendants to acknowledge, when repeatedly informed, that the manner and circumstances in which the Defendants were purporting to provide witness management, security, and support was contributing to the deterioration in the Plaintiff's health in serious ways;
- (c) the continuing failure by the Defendants to provide the Plaintiff with ongoing witness management and support, particularly forms of management and support for her circumstances which recognise and accommodate, rather than aggravate, her health issues, when the Defendants know of such health issues and the negative impact upon the Plaintiff's health of their past actions and omissions. The Plaintiff refers to and repeats paragraphs 29 to 31 and 34(a) - (e) above.
- (d) the failure and/or refusal by the Defendants to grant access to the Plaintiff to the Victorian Witness Program with an unprecedented degree of flexibility and [REDACTED] when the Defendants fail or refuse to offer practical solutions to the myriad difficulties which the Defendants can well anticipate would be caused to the Plaintiff. The Plaintiff refers to and repeats paragraphs 34(a) - (e) above.
- (e) the failure by the Defendants to accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, including but not limited to the Plaintiff's medical needs arising from her medical conditions. The Plaintiff refers to and repeats paragraphs 22 to 31 and 34(f) hereof.
- (f) the attempted imposition by the Defendants, after the Plaintiff had provided the required statement, of terms and conditions that did not correspond with the Representations. The Plaintiff refers to and repeats paragraph 30 to 31 and 34(e) hereof.
- (g) the circumstances of the failure by the Defendants to protect the identity, safety and security of the Plaintiff. The Plaintiff refers to and repeats paragraph 34(d) hereof.

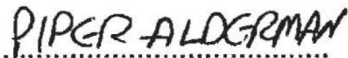
- (h) *the service by the Defendants of a Witness Summons on the Plaintiff on 8 February 2010 to attend Court and give evidence in March 2010 in circumstances where the Defendants knew that the Plaintiff would not be medically fit to attend court. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (i) *the failure by the Defendants to take any step to have the Witness Summons referred to in the previous paragraph withdrawn or adjourned so as to accommodate the Plaintiff's needs. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (j) *the refusal of the Defendants of an opportunity for the Plaintiff to recover her health or, at least, arrest the detrimental effect upon her health being caused by the conduct of the Defendants.*

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:

- A. Damages, including equitable damages or compensation.
- B. Aggravated damages.
- C. Interest.
- D. Costs.
- E. Such further or other Orders or relief as this Honourable Court shall deem just and equitable.



John R Dixon
Senior Counsel for the Plaintiff



Piper Alderman
Solicitors for the Plaintiff

1. Place of trial – Melbourne.
2. Mode of trial - Judge alone
3. This writ was filed for the Plaintiff by:

Piper Alderman Solicitors
Level 24
385 Bourke Street
MELBOURNE VIC 3000.
4. The address of the Plaintiff is:

Nicola Maree Gobbo
At an address known to the Defendants
C/- Piper Alderman Solicitors
5. The address for service of the Plaintiff is:

C/- Piper Alderman Solicitors
Level 24
385 Bourke Street
MELBOURNE VIC 3000.
6. The addresses of the Defendants is:-

C/- Victoria Government's Solicitors office
Level 33, 80 Collins Street
MELBOURNE VIC 3000

SCHEDULE OF PARTIES

NICOLA MAREE GOBBO

Plaintiff

- AND -

STATE OF VICTORIA

First Defendant

AND

SIMON OVERLAND, CHIEF COMMISSIONER OF POLICE

Second Defendant

AND

CHRISTINE NIXON, FORMER CHIEF COMMISSIONER OF POLICE

Third Defendant