

IN THE HIGH COURT OF AUSTRALIA

No. 3 of 2017

BETWEEN:

**Victoria Police Department**

(Appellant)

*-and-*

**Giorgio Vukovic**

(Respondent)

**Appellant's Outline of Submissions**

SENIOR COUNSEL  
JUNIOR COUNSEL

Julian O'Donnell  
William Connolly

**Summary of Submissions:**

- 1. The Court of Appeal erred in finding that the Appellant owed a duty of care to the Respondent.**
- 2. The Court of Appeal erred in finding that the Appellant caused the harm for the purposes of a claim in negligence.**

## **1. The Court of Appeal erred in finding that the Appellant owed a duty of care to the Respondent.**

**1.1** Reasonable foreseeability of the Respondent's harm is not enough to ground a duty of care. The Court must also consider salient features.

- *Sullivan v Moody* (2001) 207 CLR 562, 581 per Gleeson CJ, Gaudron, McHugh, Hayne and Callinan JJ.
- *Graham Barclay Oysters v Ryan* (2002) 211 CLR 540, 577–8 per McHugh J.

**1.2** Any civil liability of the Appellant is constrained by limited financial resources available for the discharge of its functions as a public authority.

- *Wrongs Act 1958* (Vic) s 79, ss 82–3.

**1.3** The imposition of a duty of care would frustrate the proper discharge of police duties.

**1.3.1** Public policy excludes the imposition of a duty of care for actions and decisions made in the course of criminal investigation.

- *Tame v New South Wales* (2002) 211 CLR 317, 361–2 per McHugh J.
- *D'Orta-Ekenaike v Victoria legal Aid* (2005) 223, CLR 1, 36 [101] per McHugh, approving *Hill v Chief Constable of West Yorkshire* [1989] AC 53.
- *Cran v New South Wales* (2004) 62 NSWLR 95, 113 [63] per Santow JA.

**1.3.2** The duty of care would lead to conflicting obligations.

- *Sullivan v Moody* (2001) 207 CLR 562, 581 per Gleeson CJ, Gaudron, McHugh, Hayne and Callinan JJ.

**1.3.3** The duty of care would lead to a 'defensive frame of mind'

- *New South Wales v Godfrey* [2004] NSWCA 113, [77] per Spigelman CJ.

**1.4** The imposition of a duty of care would undermine discretionary policy directions and resource allocations made by Victoria Police.

- *Graham Barclay Oysters v Ryan* (2002) 211 CLR 540, 557–8 per Gleeson CJ.

## **2. The Court of Appeal erred in finding that the Appellant caused the harm for the purposes of a claim in negligence.**

### **2.1 The Appellant's actions were not a necessary condition of the harm**

- *Wrongs Act 1958* (Vic) s 51(1)(a).
- *Strong v Woolworths Ltd* (2012) 246 CLR 182, 190, per French CJ, Gummow, Crennan and Bell JJ.

#### **2.1.1 The Respondent bears the onus of proving on the balance of probabilities that the Appellant's actions were a necessary condition of the various forms of harm he ultimately suffered.**

- *Wrongs Act 1958* (Vic) s 52.
- *Strong v Woolworths Ltd* (2012) 246 CLR 182, 196, per French, Gummow, Crennan and Bell JJ.

#### **2.1.2 There is no evidence on the facts that had proper apprehension procedures been followed, the harm *would not* have occurred.**

- *Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420, 442, per French CJ, Gummow, Hayne, Heydon and Crennan JJ.

### **2.2 Even if the Appellant's actions were a necessary condition, it is not appropriate for the scope of the Appellant's liability to extend to the harm caused, particularly to the Respondent's addiction and contraction of HIV.**

#### **2.2.1 Policy considerations dictate that it is not appropriate for liability to extend even to the Respondent's amputation.**

- *Wrongs Act 1958* (Vic) s 51(1)(b), (4).

#### **2.2.2 A "new intervening act", in the form of a voluntary action by the Respondent, severed the causal chain and so it is not appropriate for the Appellant to be held liable for the Respondent's addiction or HIV.**

- *Yates v Jones* [1990] NSWCA 618.
- *Goodsell v Murphy* [2002] NSWCA 216, per Mason P.

#### **2.2.3 An alternative new intervening act was the subsequent negligent conduct by the hospital.**

- *Chapman v Hearse* (1961) 106 CLR 112, 122 per Dixon CJ, Kitto, Taylor, Menzies, Windeyer JJ.
- *Mahony v J Kruschich (Demolitions) Ltd* (1985) 156 CLR 522, 530, per Gibbs CJ, Mason, Wilson, Brennan and Dawson JJ.

## **Authorities Cited:**

### *A Cases*

*Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420

*Chapman v Hearse* (1961) 106 CLR 112

*Cran v New South Wales* (2004) 62 NSWLR 95

*D'Orta-Ekenaike v Victoria legal Aid* (2005) 223, CLR 1

*Goodsell v Murphy* [2002] NSWCA 216

*Graham Barclay Oysters v Ryan* (2002) 211 CLR 540

*Strong v Woolworths Ltd* (2012) 246 CLR 182

*Hill v Chief Constable of West Yorkshire* [1989] AC 53

*Mahony v J Kruschich (Demolitions) Ltd* (1985) 156 CLR 522

*New South Wales v Godfrey* [2004] NSWCA 113

*Sullivan v Moody* (2001) 207 CLR 562

*Tame v New South Wales* (2002) 211 CLR 317

*Yates v Jones* (1990) Aust Torts Reports 81-009

### *B Legislation*

*Wrongs Act 1958* (Vic)