



**Common Law Division  
Supreme Court  
New South Wales**

Case Name: **Romani v State of New South Wales**

Medium Neutral Citation: [2022] NSWSC 1086

Hearing Date(s): 29 July and 11 August 2022

Date of Orders: 29 July and 11 August 2022

Date of Decision: 15 August 2022

Jurisdiction: Common Law

Before: Lonergan J

Decision: **Orders made on 29 July 2022:**

(1) Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Notices to Produce issued on the State of New South Wales signed by the first plaintiff on 19 April 2022 and served on the State of New South Wales on 29 April 2022 are set aside.

(2) Paragraph 13 of the Notices to Produce is amended to read “All incident reports, COPS event reports, COPS information reports, handover/changeover records, audio recordings, video, notebook entries, diaries entries between 20 August 2021 and 24 August 2021 specific to New South Wales police officers attendance at 250 Warrazambil Creek Road, Warrazambil Creek in the State of New South Wales.”

(3) The State of New South Wales is to produce documents responsive to the amended paragraph(s) 13 above within 7 days by email to the plaintiffs at their address for service noting those records will be redacted and are permitted to be redacted so that any material irrelevant or outside the contents of amended paragraph 13 of the Notice because they are not related to the attendance referred to in the order 2 above, is unable to be seen.

(4) The defendant is to file and serve its evidentiary statements on or before Friday 26 August 2022.

(5) The plaintiffs are to file and serve any evidentiary statements in reply on or before Friday 9 September 2022.

(6) The matter is listed for directions before Lonergan J at 9:30am on 15 September 2022.

(7) Each party to bear its own cost of the Notice of Motion.

**Additional orders:**

(8) The Notice to Produce for inspection under r 21.10 is set aside in full.

(9) Order 2 made on 29 July 2022 is set aside, and in lieu thereof, paragraph 13 of the Notice to Produce to the Court under r 34.1 is amended to read as follows:

“All NSW Police orders, tasking documents, incident reports, COPS event reports, COPS information reports, handover/changeover records, audio recordings, video, notebook entries, diary entries, complaint letters, investigation reports, responses to complaints, relating to or arising from the attendance of officers Tony Fahey and David Rankin at 250 Warrazambil Creek Road, Warrazambil Creek in the State of New South Wales on 24 August 2021.”

(10) The State of New South Wales is to produce to the Court any further documents in response to the reworded paragraph 13 of the Notice on 15 September 2022 at 9:30am.

(11) The plaintiffs are to pay the defendant’s costs of the Notice of Motion.

Catchwords:

CIVIL PROCEDURE – notices to produce – notice to produce for inspection (r 21.10) – notice to produce to Court (r 34.1)

Legislation Cited:

Police Act 1990 (NSW)  
Uniform Civil Procedure Rules 2005 (NSW)

Cases Cited:

Air Canada v Secretary of State for Trade [1983] 2 AC 394

Alister v the Queen (1984) 154 CLR 404, [1984] HCA 85  
Department of Planning, Industry and Environment v Blacktown City Council [2021] NSWCA 145  
Norris v Kandiah [2007] NSWSC 1296  
Patonga Beach Holdings v Lyons [2009] NSWSC 869  
Portal Software v Bodsworth [2005] NSWSC 1115  
Waind v Hill & National Employers Mutual General Association Limited [1978] 1 NSWLR 372

Category: Procedural rulings

Parties: Sanchia Romani (First Plaintiff)  
Maia Huxtable (Second Plaintiff)  
State of New South Wales (Defendant)

Representation: Counsel:  
B Searson (Defendant)

Solicitors:  
Self-represented (First Plaintiff)  
Self-represented (Second Plaintiff)  
McCabe Curwood (Defendant)

File Number(s): 2021/00326635

Publication Restriction: Nil

## **JUDGMENT**

- 1 The State of New South Wales (the “State”) seeks orders setting aside most of two Notices to Produce filed by the plaintiffs and for the Court to authorise a re-draft of paragraph 13, being the only paragraph that seeks identifiable documents.
- 2 On 29 July 2022, after hearing from the parties, I made orders setting aside all of the Notices, (which were in identical terms), except paragraph 13. This judgment includes my reasons for making those orders.
- 3 On 11 August 2022 I heard further from the parties regarding the wording of paragraph 13 and this led to some further orders set out in par 38 of this judgment. My reasons for making those additional orders are set out at pars 16, 17, 35 and 36 of this judgment.

### **Background**

- 4 The plaintiffs prefer to be called “Sanchia” and “Maia” and so I will adopt that approach in this judgment. Sanchia and Maia are occupants of property at Warrazambil Creek. They filed a Summons on 17 November 2021 asserting a claim in “Trespass” and “Personal Injury - Other” against three named defendants who are police officers. Sanchia and Maia assert that on 24 August 2021, two of the named uniformed officers, at the request of the third police officer, (then the Commissioner of Police), accessed their property by jumping or climbing over a locked gate. They then questioned and frightened Maia, and, it is alleged, refused to leave when asked and threatened to return.
- 5 Sanchia and Maia both assert that this caused serious anxiety and distress to them and was a gross invasion of privacy. They also assert that complaints about the incident were inadequately dealt with by NSW Police.
- 6 The State, (substituted as defendant by orders of Ierace J on 28 March 2022), asserts in its Defence, that the officers were acting in good faith in accordance

with s 6 of the *Police Act 1990* (NSW) and so there is no liability to the plaintiffs. The State also denies that any personal injury was suffered.

### **Notices to produce**

7 On 29 April 2022, Sanchia, on behalf of herself and Maia, served two Notices to Produce ('the Notices'), one for inspection of documents under r 21.10 and the other to "produce documents to the Court" under r 34.1 of the Uniform Civil Procedure Rules 2005 (NSW) ("UCPR").

8 Both Notices were dated 19 April 2022 and were in these terms:

"It is required that the following evidence be produced for inspection by the Defendant State of New South Wales/New South Wales Police Force to the Plaintiff's called by Sanchia: Romani and by Maia Huxtable, case 2021/00326635:

1. The evidence of facts be provided of the reason for the attendance and entry upon the plaintiffs' property/land was of a criminal or civil nature.

2. What was the intent of the attendance for entry upon property/land?

3. That evidence be provided that there has been any suspected or purported criminal offence or act committed by the first plaintiff to justify attendance by the New South Wales Police Force and their officers.

4. That the State of New South Wales, Senior Constable Toney Fahey and Senior Constable Daniel Rankin provide lawful reason/justification for attendance and entry upon the plaintiffs' property, it being very clear there was no implied licence to enter upon the property, by climbing over a padlocked gate on a rural property, incognizant of and passing two No Trespass Notices/Signs, one on the gate and one inside the gate, and not leaving the property when asked a third time by the occupier of the property/land.

5. Evidence of Senior Constable Toney Fahey and Senior Constable Daniel Rankin's Police oaths in service of the Crown.

6. Evidence of operational orders given:

a) who gave the orders and instructed the officers to attend the plaintiffs' property;

b) were the men's actions independent or were they instructed?

c) What were the specific orders instructed?

Reference is made to Acting District Inspector of Richmond Police District, Lismore, Nigel Howard's correspondence on the twenty fourth day, September, two thousand and twenty-one, "Police attended your address to speak to you about a proposed protest". Also, correspondence on the twenty seventh day, October, two thousand and twenty-one from acting Superintendent Scott Tanner of the Richmond Police District, Lismore, declining to investigate, considering the plaintiffs' complaint finalised. See Annexure F and D(iv)- original filing.

7. That evidence be provided whereby Acting District Inspector, Nigel Howard acquired information about the proposed protest that he refers to in his correspondence.

8. That evidence of where and how the private details of the plaintiffs' address and the name Sanchia Romani were obtained whereby the State of new South Wales/New South Wales Police Force "suspected" a "purported offence" for lawful reason/justification of their attendance and entry upon the plaintiffs' property/land.

9. That evidence be provided by the defendants for the justification of their claim that the plaintiffs pay the defendants costs and as a matter of moral honourability.

10. That evidence be provided how the State of New South Wales, Amanda Kmetyk, Rebecca Gracie and associates at McCabes Lawyers, obtained the plaintiffs' private information, email address and other private property details and took liberty to correspond with us and who was it that gave the plaintiffs' private information without consent, from a private matter filed at the Court, and why were we not informed?

11. That evidence be provided that the plaintiff's privacy has not been breached and solicited by the disclosure of our private information and its primary purpose, and in accordance with the Australian Privacy Principles, resulting in the intrusion and interference of the State of New South Wales, Amanda Kmetyk, Rebecca Gracie and associates at McCabes Lawyers Sydney and thus placed the plaintiff's in harms' way, whereby the plaintiff's claim was filed at the Court against three men in their private capacity, a private matter, and that none of the men gave notice to the plaintiffs of who engaged a third party to act on their behalf, placing the plaintiffs in a liable situation by creating pressure to disclose information of a private matter. The plaintiff's having no correspondence from the men of their intentions.

12. Who authorised the issuing of our private information be given to Amanda Kmetyk and associates, State of New South Wales, Acting Superintendent Scott Tanner and Acting District Inspector Nigel Howard of the Richmond Police District?

13. That all incident reports, details, records, radio, audio, video, telecommunications, documentation, other devices or methods, notebooks, diaries relating to the matter of police officers Toney Fahey and Daniel Rankin be provided.

14. That Amanda Kmetyk provide evidence of her first-hand knowledge of the account of the event of entry upon the plaintiffs' land.

15. That evidence is provided by way of facts to substantiate lawful justification that the State of New South Wales/New South Wales Police Force, relies upon to deny the plaintiffs their rights afforded to the plaintiff's by common law.

16. That evidence be provided how the former police commissioner Michael Fuller has managed and controlled responsibly the training and conduct of New South Wales Police Officers of all those herein named and involved in this matter; Toney Fahey, Daniel Rankin, Scott Tanner, Nigel Howard, civilian Stacey Briggs, Olivia Howard.

17. That evidence be provided of whether the officers attending the plaintiff's property/land were armed."

9 On 14 June 2022 the State filed a Notice of Motion seeking orders setting aside all but paragraph 13 of the Notices and proposing an amendment to paragraph 13 of the Notices as follows:

"All COPS events, COPS information reports, handover/changeover records, audio recordings, video, notebook entries, diaries entries between 20 August 2021 and 24 August 2021 specific to New South Wales police officers' attendance at 250 Warrazambil Creek Road, Warrazambil Creek in the State of New South Wales."

10 The State indicated in an affidavit of Ms Amanda Kmetyk, solicitor, dated 14 June 2022 that it is willing and able to produce documents responsive to the proposed amended paragraph 13 on the basis that the Court formally authorises redaction of the documents to remove irrelevant material.

**Procedure adopted at the hearing on 29 July 2022 and 11 August 2022 for production of documents to the Court**

11 Counsel for the State, Mr Searson, produced to the Court the documents he was instructed responded to the State's proposed redraft of paragraph 13 of the Notices. The documents comprised:

- (i) Richmond PD DI Changeover Form Shift Precis for 24 August 2021;
- (ii) An extract from the notebooks of SC Rankin and SC Tony Fahey;

(iii) Intelligence Information Summary (2 pages).

- 12 Those documents were produced in both redacted and unredacted form so that the Court could satisfy itself that the redacted version comprised the totality of relevant responsive material and that material only.
- 13 The documents produced did not include any material dated after 24 August 2021 and so included nothing regarding the complaint made by the plaintiffs about the police attendance, nor the investigation of that complaint, although it is common ground that a complaint was made and an investigation did occur.
- 14 The photocopy of pages from the diaries of the two attending police officers bore no entry at all regarding the incident in question, other than the time the officers' shift commenced and ended.
- 15 Orders were made regarding the Notice including the time for copies of the redacted documents to be provided to the plaintiffs (who appeared remotely by AVL and so could not be handed the documents). Submissions were made about costs. Case management orders were made for the filing and service of evidentiary statements.
- 16 Whilst writing the judgment after 29 July 2022 I became aware that the paragraph 13 redraft proposed by the defendant was more narrow than that proposed by the plaintiffs and so the matter was listed for further oral submissions on 11 August 2022.
- 17 On 11 August 2022, the Court proposed a redraft of paragraph 13 of the Notice not confined to documents created between 20 and 24 August 2021. Mr Searson indicated that there would be a statutory protection or privilege from producing any investigation documents (s 170 of the *Police Act*). The Court indicated that was a separate issue and would need to be the subject of affidavit evidence at the time of production of documents responsive to the redrafted paragraph 13. Mr Searson indicated that he did not wish to be heard against that proposition.



## Legal Principles and Relevant Rules

- 18 As Notices were issued under both rr 21.10 and 34.1, I will address their different functions.
- 19 Part 21 of the UCPR deals with discovery, inspection and notice to produce documents. Rules 21.9, 21.10 and 21.11 provide:

### 21.9 Definitions

(1) In this Division—

**notice to produce** means a notice to produce referred to in rule 21.10.

**party A** means a party to whom another party is producing, or being asked to produce, documents or things for inspection.

**party B** means a party who is producing, or being asked to produce, documents or things for inspection.

(2) For the purposes of this Division, a document or thing is to be taken to be **relevant to a fact in issue** if it could, or contains material that could, rationally affect the assessment of the probability of the existence of that fact (otherwise than by relating solely to the credibility of a witness), regardless of whether the document or thing would be admissible in evidence.

### 21.10 Notice to produce for inspection by parties

(1) Party A may, by notice served on party B, require party B to produce for inspection by party A—

(a) any document or thing that is referred to in any originating process, pleading, affidavit or witness statement filed or served by party B, and

(b) any other specific document or thing that is clearly identified in the notice and is relevant to a fact in issue.

(2) A notice to produce may specify a time for production of all or any of the documents or things required to be produced.

### 21.11 Production under notice to produce

(1) Unless the court orders otherwise, party B must, within a reasonable time after being served with a notice to produce—

(a) produce for party A's inspection such of the documents or things referred to in the notice (other than privileged documents) as are in party B's possession, and

(b) serve on party A, in respect of any document that is not produced, a notice stating—

(i) that the document is a privileged document, or

(ii) that the document is, to the best of party B's knowledge, information and belief, in the possession of a person identified in the notice, or

(iii) that party B has no knowledge, information or belief as to the existence or whereabouts of the document.

(2) For the purposes of subrule (1)—

(a) unless party B establishes to the contrary, 14 days or longer after service of the notice is to be taken to be a reasonable time, and

(b) unless party A establishes to the contrary, less than 14 days after service of the notice is to be taken to be less than a reasonable time.

20 In contrast, a notice issued under r 34.1 of the UCPR is more akin to a subpoena, requiring as it does, production of documents to the Court:

### **34.1 Notice to produce to court**

(1) A party may, by notice served on another party, require the other party to produce to the court, or to any examiner—

(a) at any hearing in the proceedings or before any such examiner, or

(a1) at any time fixed by the court for the return of subpoenas, or

(b) by leave of the court, at some other specified time,

any specified document or thing.

(2) The other party must comply with a notice to produce—

(a) by producing the notice or a copy of it, and the document or thing, to the court, or to the examiner authorised to take evidence in the proceeding as permitted by the court, at the date, time and place specified for production, or

(b) by delivering or sending the notice or a copy of it, and the document or thing, to the registrar at the address specified for the purpose in the notice, so that they are received not less than 2 clear days before the date specified in the notice for production.

21 When asked by the Court as to why two Notices were issued seeking the same documents, Sanchia said it was because the first Notice was not answered. I do not accept that is correct given both Notices bear the same date and were

served on the same date. More likely, Sanchia acting without legal assistance, was not sure which Rule was the appropriate one to pursue.

- 22 In *Norris v Kandiah* [2007] NSWSC 1296, Brereton J (as he then was) pointed out the difference:

“[3] There are important and fundamental distinctions between a notice to produce under r 21.10 and a notice to produce under r 34.1. Rule 21.10, appearing as it does in Pt 21 of the Rules, is a process of discovery. A notice under r 34.1, appearing in Pt 34 entitled Notice to Produce to Court and following notices to produce at the hearing including opinions is a process akin to a subpoena for production. I endeavoured to explain the differences between the process of discovery and that of a subpoena for production in *A Pty Ltd v Z* [2007] NSWSC 899. One of the critical differences is that the touchstone of discovery is the concept of relevance to a fact in issue in the proceedings, whereas subpoenas for production are not necessarily limited to documents relevant to a fact in issue, but may extend to documents relevant to credit.”

- 23 The ambit for production under r 21.10 is considerably more narrow: see *Patonga Beach Holdings v Lyons* [2009] NSWSC 869 at [11] and [12] per Barrett J:

“[11] It is thus clear that, in rule 21.10, the combination of "specific document" and "clearly identified" means that a notice can relate only to a document describe by means of characteristics peculiar to itself, such as a letter of a given date written by X to Y, or the minutes of a meeting of directors of Z Limited held on a given date. A notice relating to all letters written by X to Y in 2008 or the minutes of all meetings of the directors of Z Limited held in 2008 would not be permitted because referring to a class of document as distinct from what Harrison AsJ in *Douglas Corporation v Currico Nominees* [2007] NSWSC 113 termed "the individual document sought" is not a permissible course.

[12] The language used in rule 34.1. – “specified document” – is different. The word “specified” here means, in my view, the same as "described" or “identified”, so that a notice under rule 34.1 plays in relation to a party the role that is played under rule 33 by a subpoena in relation to a non-party.”

- 24 As determined in *Portal Software v Bodsworth* [2005] NSWSC 1115, the rules applicable to subpoenas are applicable to notices to produce to court under rule 34.1. The process entails three steps; first, production to the court of the documents described, second, inspection of the documents produced and third, consideration as to whether the documents can be used in the proceedings.

- 25 There is an onus on the party issuing the notice to demonstrate its legitimacy and that it seeks documents to be produced for a legitimate forensic purpose.
- 26 The issuing party needs to precisely and expressly identify the purpose – that is, they must identify the use they wish to make of the documents that they seek unless the court considers the matter is obvious or is willing to accept an assurance from experienced counsel.
- 27 The purpose identified must be a legitimate forensic purpose and there needs to be an identification of the issue to which the documents are relevant, and how the documents will assist in resolving that issue.
- 28 In the past, the test applicable in civil proceedings in terms of the degree of confidence with which the court must be satisfied that the documents will assist the party seeking them has been expressed as including definite grounds for expecting to find material of real importance to the party seeking disclosure: *Air Canada v Secretary of State for Trade* [1983] 2 AC 394 at 436D; or, some concrete ground for believing that the documents contain material substantially useful to the party seeking it: *Alister v the Queen* (1984) 154 CLR 404.
- 29 What must be shown to establish legitimate forensic purpose has recently been re-examined and clarified by the NSW Court of Appeal in *Secretary of the Department of Planning, Industry and Environment v Blacktown City Council* [2021] NSWCA 145 (“*Blacktown City Council*”). Bell P (as he then was) said:

“[69] If the documents are apparently relevant and, provided that the terms of the subpoena are not unduly vague or the ambit of the subpoena is not such that it would be oppressive to comply with it, the subpoena should not be set aside. To that extent, the statement in *Chidgey* at [59] that mere relevance is “not sufficient”, and a similar statement in *Carroll* at 182 that “mere relevance is not enough” may, with respect, be apt to mislead or confuse. In the latter case, Mahoney AP said at 182 that a party issuing the subpoena:

“must be able to indicate that the document is relevant in the sense that it may assist his case. In the present case, that could not be claimed. Nor was it shown. At best, the claim was: ‘I wish to see the document to see if it may assist my case.’ That, in my opinion, is not sufficient.”

...

[80] My review of the authorities in relation to the setting aside of subpoenas and/or the refusal to permit access to documents produced leads me to the conclusion that, although a party will generally be able to demonstrate that it had a legitimate forensic purpose in issuing a subpoena where, to quote Simpson J (as her Honour then was, and with whom Spigelman CJ and Studdert J agreed) in *Saleam* at [11], it can:

“(i) identify a legitimate forensic purpose for which access is sought; and

(ii) establish that it is ‘on the cards’ that the documents will materially assist his case”,

at least in civil matters, an inability to demonstrate that it is “on the cards” that the documents sought will materially assist the subpoenaing party’s case will not automatically require either that the subpoena be set aside or that access to the documents produced be refused. *It will generally be sufficient and prima facie evidence of a legitimate forensic purpose if the documents sought to be produced on subpoena have an apparent relevance to the issues in the case and or bear upon the cross examination of witnesses expected to be called in the proceedings.*” (emphasis added)

30 Once documents are produced to the court, as stated in *Waind v Hill & National Employers Mutual General Association Limited* [1978] 1 NSWLR 372, the court has a wide discretionary power as to whether or not the parties will be permitted to inspect the documents produced and if so, subject to what restrictions. The general rule is that the judge, having inspected the documents, will permit inspection of documents that have apparent relevance. Within this power is the power to order redaction of irrelevant parts of documents produced.

## Decision

31 It is evident that the Notices were deployed to obtain, to the extent possible, documents expected to exist relevant to the police attendance at Sanchia and Maia’s premises on 24 August 2021, as well as the subsequent complaint about it, and the investigation of that complaint.

32 Members of the public cannot be expected to know exactly what documents would exist and how they would or should be described. Some latitude should be extended, provided that what is sought are sufficiently described and are “documents” that exist, rather than “evidence” not yet in existence.

- 33 The Notice to Produce for Inspection issued under r 21.10 does not correspond with the requirements of specificity set out in that Rule. The Notice does not describe any “document or thing referred to in any originating process, procedures, affidavits or witness statement” filed or served by the State, nor does it “clearly identify” or describe sufficiently any “specific document or thing relevant to a fact in issue”. Instead, it seeks at best, categories of documents. Mostly the Notice requests “evidence” and engages in a kind of hybrid interrogation. The Notice under r 21.10 is defective and accordingly is set aside.
- 34 Turning to the Notice to Produce to the Court under r 34.1, all but paragraph 13 of the Notice seeks “evidence” rather than documents, or seeks to interrogate the defendant or, even more impermissibly, its solicitors. Notices to Produce cannot require a party to create documents to assist the other party or to answer questions. Paragraphs 1 to 12 and 14 to 17 must be set aside on that basis. Paragraph 13 as drafted specifies categories of documents and should not be set aside, but can, with co-operation, be improved.
- 35 The State in its solicitor’s affidavit proposed a redraft of paragraph 13 which would have imposed a time restriction on documents sought to a 4-day period and would have removed from the obligation to produce, any relevant document created before 20 August 2021 or after 24 August 2021.
- 36 Statements or documents, if any, created before 20 August 2021 and after 24 August 2021 regarding the events complained of, are still likely to meet the legitimate forensic purpose test set out in *Blacktown City Council*.
- 37 On 29 July 2022 I made the following orders:
- (1) Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Notices to Produce issued on the State of New South Wales signed by the first plaintiff on 19 April 2022 and served on the State of New South Wales on 29 April 2022 are set aside.

- (2) Paragraph 13 of the Notices to Produce is amended to read “All incident reports, COPS events reports, COPS information reports, handover/changeover records, audio recordings, video, notebook entries, diaries entries between 20 August 2021 and 24 August 2021 specific to New South Wales police officers attendance at 250 Warrazambil Creek Road, Warrazambil Creek in the State of New South Wales.”
- (3) The State of New South Wales is to produce documents responsive to the amended paragraph(s) 13 above within 7 days by email to the plaintiffs at their address for service noting those records will be redacted and are permitted to be redacted so that any material irrelevant or outside the contents of amended paragraph 13 of the Notice because they are not related to the attendance referred to in the order 2 above, is unable to be seen.
- (4) The defendant is to file and serve its evidentiary statements on or before Friday 26 August 2022.
- (5) The plaintiffs are to file and serve any evidentiary statements in reply on or before Friday 9 September 2022.
- (6) The matter is listed for directions before Lonergan J at 9:30am on 15 September 2022.
- (7) Costs of the Notice of Motion are reserved.

38 I now make the following further orders to reflect my further consideration and conclusions:

- (8) The Notice to Produce for inspection under r 21.10 is set aside in full.
- (9) Order 2 made on 29 July 2022 is set aside, and in lieu thereof, paragraph 13 of the Notice to Produce to the Court under r 34.1 is amended to read as follows:

“All NSW Police orders, tasking documents, incident reports, COPS event reports, COPS information reports, handover/changeover records, audio recordings, video, notebook entries, diary entries, complaint letters, investigation reports, responses to complaints, relating to or arising from the attendance of officers Tony Fahey and David Rankin at 250 Warrazambil Creek Road, Warrazambil Creek in the State of New South Wales on 24 August 2021.”

- (10) The State of New South Wales is to produce to the Court any further documents in response to the reworded paragraph 13 (set out in order 9 above) on 15 September 2022 at 9:30am.

### **Costs**

- 39 The State’s Notice of Motion to set aside the Notices to Produce has been almost entirely successful.
- 40 Ancillary orders sought in the Notice to permit redaction of documents to remove irrelevant and confidential police information about other matters were necessary and appropriate.
- 41 I accept that it is unlikely any agreement would have been reached with the plaintiffs about production of documents or the necessary redactions.
- 42 The Notices were prolix and inappropriately sought “evidence” and answers to questions including questions about entirely irrelevant matters and privileged information rather than documents.
- 43 In those circumstances the plaintiffs should pay the defendant’s costs of the Notice of Motion.

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I certify that this and the 15 preceding pages are a true copy of the reasons for judgment herein of the Honourable Justice Lonergan.

*Dianne Aleksic*  
Associate  
Date: 15 August 2022