SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**Knight v Commonwealth of Australia (No 3)**
Citation:	**[2017] ACTSC 3**
Hearing Dates:	4, 7 May, 3 August, 3 November 2015
Decision Date:	13 January 2017
Before:	Mossop AsJ
Decision:	See [233]
Catchwords:	LIMITATION OF ACTIONS – Application for extension of time – Claim for damages arising out of assault and negligence – Multiple incidents giving rise to claims – Incidents occurred while plaintiff was a cadet at the Royal Military College, Duntroon – Plaintiff subsequently sentenced and imprisoned for separate incident – 27-year delay in commencing proceedings – Whether *Limitation Act 1985* (ACT) s 36 permitting the grant of an extension of time applies – Whether an explanation for the delay existed – Whether just and reasonable to grant extension of time – Consideration s 36(3) considerations – Meaning of disability for the purposes of s 36(3)(d) – Broader significance in relation to abuse in the armed services – Significance of absence of other remedies – Proportionality between damages and cost and effort associated with running claim – Whether proceedings amount to abuse of process – Whether use of proceedings as a means of achieving an interstate transfer predominant purpose of bringing proceedings – application dismissed
Legislation Cited:	*Civil Law (Wrongs) Amendment 2003 (No 2)* (ACT), s 58 *Corrections Act 1986* (Vic), s 74AA *Corrections Amendment (Parole) Act 2014* (Vic) *Crimes (Sentence Administration) Act 2005* (ACT), s 244 *Interpretation of Legislation Act 1984* (Vic) *Legislation Act 2001* (ACT), ss 88, 141 *Legislation Ordinance 1985* (ACT) *Limitation Act 1980* (UK), s 33 *Limitation Act 1985* (ACT), ss 16B, 36(2), 36(3)(d), 36(5), Dictionary *Limitation of Actions Act 1958* (Vic), ss 23A, 23A(3)(d) *Limitation of Actions (Personal Injury Claims) Act 1983* (Vic) *Limitation Amendment Act 2005* (ACT) *Prisoners (Interstate Transfer) Act 1983* (Vic) *Victims of Crime (Financial Assistance) Act 1983* (ACT)
Cases Cited:	*Attorney-General for the State of Victoria v Knight* [2016] VSC 488 *Australian Croatian Cultural and Educational Association "Braca Radici" Blacktown Ltd v Benkovic* [1999] NSWCA 210 *Ball v Commonwealth* (unreported, Supreme Court of the Australian Capital Territory, Gallop J, 3 February 1997) *Doyle v Gillespie* [2010] ACTSC 21 *He Kaw Teh v The Queen* [1985] HCA 43; (1985) 157 CLR 523

Hunter Valley Developments Pty Ltd v Cohen (1984) 3 FCR 344
In the matter of an application by Knight under the Criminal Injuries Compensation Act 1983 (ACT) [2014] ACTSC 337
Itek Graphix Pty Ltd v Elliott [2002] NSWCA 104; (2002) 54 NSWLR 207
Knight v Australian Capital Territory [2016] ACTCA 3
Knight v Commonwealth of Australia [2016] FCA 1160
Knight v State of Victoria [2014] FCA 369
Lean v The Queen (1989) 1 WAR 348
Maxwell v the Queen [1996] HCA 46; (1996) 184 CLR 501
Petelin v Cullen [1975] HCA 24; (1975) 132 CLR 355
R v Parker [1977] VR 22
Smith v Department of Defence (unreported, NSW Supreme Court, Sperling J, 6 April 1998)
Stefek v Garnama Pty Ltd [2014] ACTSC 140
Taylor v Commonwealth (unreported, Supreme Court of the Australian Capital Territory, Higgins J, 27 November 1997)
Taylor v Johnson [1983] HCA 5; (1983) 151 CLR 422
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Texts Cited:

Attorney-General's Department, *Proposals for the Reform and Modernization of the Laws of Limitation in the Australian Capital Territory* (Canberra, April 1984)
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Law Reform Committee, United Kingdom Parliament, *Final report on limitations of actions*, Report No 21 (1977)
Law Reform Committee, United Kingdom Parliament, *Interim Report on Limitation of Actions – In Personal Injury Claims*, Report No 20 (1974)

Parties:

Julian Knight (Plaintiff)

Commonwealth of Australia (First Defendant)

Craig Colis Thorp (Second Defendant)

Philip John Reed (Third Defendant)

Representation:

Counsel:

Self-represented (Plaintiff)

Mr R Crowe SC (Defendants)

Solicitors:

Self-represented (Plaintiff)

Australian Government Solicitor (Defendants)

File Number: SC 176 of 2014

Introduction

1. The plaintiff, Julian Knight, was a cadet at the Royal Military College, Duntroon in 1987. He resigned from the Army in June 1987 and his service ended on 24 July 1987. On 9 August 1987 he committed what has become known as the Hoddle Street Massacre

in which seven people were killed and 19 were injured. In the period since 1987 he has been in custody in Victoria. Notwithstanding that when he was sentenced for his conduct a minimum term was set for his imprisonment he has not been granted parole. Special legislation directed at him has been passed by the Victorian Parliament which effectively ensures that, notwithstanding the expiry of his minimum term, he must remain in custody.

2. The proceedings before the Court involve an application for an extension of time under s 36(2) of the *Limitation Act 1985* (ACT) in which to bring proceedings arising out of the events that occurred in the period February to May 1987. The plaintiff seeks damages arising from negligence on the part of the Commonwealth and assaults committed by other cadets at the Royal Military College at the same time as the plaintiff.

Procedural History

3. The plaintiff filed his originating claim and statement of claim as well as an application for an extension of time on 23 May 2014. The originating claim and statement of claim were dated 8 April 2014.

4. The preparation of the matter for a hearing of the extension of time was drawn out by applications for specific discovery, preliminary discovery, leave to join additional parties and leave to amend the statement of claim and an application to enforce compliance with a notice for non-party production. The application itself was heard over four days between May and November 2015. The plaintiff's preparation for the hearing was made more complicated by prison riots which occurred in July 2015.

5. The procedural history may be summarised as follows:

23 May 2014	Proceedings commenced
19 September 2014	Judgment in relation to application by plaintiff to join additional parties and amended statement of claim: *Knight v Commonwealth of Australia* [2014] ACTSC 403
26 November 2014	Orders made in relation to preliminary discovery
5 February 2015	Leave granted to file an amended Originating Claim
9 February 2015	Judgment in relation to application for leave to amend the statement of claim*: Knight v Commonwealth of Australia, Thorp and Reed* [2015] ACTSC 13
5 March 2015	Leave granted to the plaintiff to file an amended statement of claim
4, 7 May 2015	Hearing of application to extend time
9 July 2015	Application for orders requiring compliance with a notice for non-party production by Office of Public Prosecutions (Victoria) dismissed
3 August 2015	Hearing of application to extend time. Decision reserved subject to receipt of written submissions from the plaintiff.
3 November 2015	Further oral submissions made at the request of the plaintiff. Decision reserved.

The pleaded claim

6. The claim that the plaintiff wishes to pursue is a claim for damages arising from 10 identified incidents involving an assault or battery (or both) upon him. The claim is principally targeted at the Commonwealth which is said to be both vicariously liable for the actions of the persons who committed the assaults and batteries as well as liable in negligence as a result of a failure to provide a safe system of work.

7. Although the statement of claim is imperfectly pleaded I understand that the plaintiff also seeks damages against the second and third defendants for those assaults or batteries which they committed. I will summarise the allegations relating to the 10 incidents and also identify the nature of the injury alleged to have arisen from each of those incidents.

Incident 1 – February 1987: "leaps and jumps" incident

8. It is alleged that "[in] February 1987 at Duntroon… junior cadets in the Kokoda Company including the plaintiff were assembled and informed they were going to play 'leaps and jumps'. This involved a person nominating a form of dress and the time required in which to change into that dress. While cadets ran to their rooms to change, senior cadets obstructed them by using water pistols, blocking the hallways or stopping them to ask ridiculous questions. During this exercise Corporal William Yates grabbed the plaintiff as he ran past and punched him twice in the stomach with significant force."

9. The injury alleged is simply that "the plaintiff suffered injury".

Incident 2 – 17 March 1987: "Bishing" incident

10. The plaintiff alleges that "on 17 March 1987… during an instance of inter-company fighting known as "bishing" the plaintiff was pushed from behind into some rose bushes and when he arose he was repeatedly punched about the head and body, mostly to the back of the head, kicked and kneed, pushed and dragged to the ground."

11. The injury alleged is "severe swelling and reddening of the back of his left hand and wrist and a temporary mild paralysis involving his left hand". He alleges that he was treated at a hospital where a diagnosis of "severe ligament damage of the dorsum of the left risk was made, the wrist was placed in a back slab and he was provided with a sling".

Incident 3 – 15 May 1987: Hallway Incident

12. The plaintiff alleges that on 15 May 1987 at Duntroon "in the hallway of the second story south wing of the Kokoda Company barracks Corporal Matthew Thompson, a senior cadet, said: 'have you been charged with being a fuck-bucket yet?' The plaintiff was then given permission to walk between two lines of sitting cadets who attempted to trip him making contact with his legs as he passed through."

13. The injury alleged is "minor transient injury".

Incident 4 – Mid-May 1987: Parade Rehearsal Incident

14. The plaintiff alleges that during a parade rehearsal at Duntroon the plaintiff was abused by Staff Cadet Robert Hamburger for not being able to march and throughout the rehearsal was kicked in the heels by Staff Cadet Hamburger.

15. The plaintiff is alleged to have suffered “minor transient injury”.

Incident 5 – 30 May 1987: Bayonet Incident

16. The plaintiff alleges that on 30 May 1987 at Duntroon following a parade rehearsal for the Queen’s Birthday Parade the plaintiff was verbally abused by Lance Corporal Colin Thorp, the second defendant, for wearing jeans at the Private Bin Nightclub the previous evening. The plaintiff alleges: “the 2nd defendant told the plaintiff that he ‘must be a fucking idiot’ for wearing jeans on local leave and not returning to barracks when instructed to do so by Staff Cadet Nicolas Everingham. The 2nd defendant then jabbed the plaintiff in the chest with his bayonet causing minor transient injury.”

17. As will be apparent, the injury alleged is “minor transient injury”.

Incident 6 – 30 May 1987 Hallway Incident

18. On the same day Staff Cadet Hamburger is alleged to have abused the plaintiff by saying “I oughta punch you in the head!”. It is then alleged that shortly after Staff Cadet Hamburger “grabbed the plaintiff with both hands by the front of his shirt, pushed him up against the wall and held him there repeating ‘I oughta punch you in the fucking head!’”.

19. It is alleged that the plaintiff was fearful that Mr Hamburger and other senior staff cadets present were about to engage in a more severe assault of him than the one that actually occurred. Thus the allegation appears to be of both a battery and an additional assault.

20. No particular injury is identified.

Incident 7 – 30 May 1987: Incident with Corporal Thompson

21. The plaintiff alleges that shortly after the hallway incident Corporal Matthew Thompson shouted at the plaintiff “I saw that! You’re gone! You’re getting charged with insubordination and assaulting a superior!”.

22. This is alleged to be an assault because “the plaintiff was fearful that Corporal Thompson was about to engage in a more severe assault of him than the one that actually occurred”.

Incident 8 – 30 May 1987: Incident with Staff Cadet Everingham

23. The plaintiff alleges that shortly after the incident with Corporal Thompson, Staff Cadet Nicholas Everingham ran at the plaintiff shouting abuse.

24. This is alleged to be an assault because “the plaintiff was fearful that Staff Cadet Everingham was about to engage a more severe assault of him than the one that actually occurred”.

Incident 9 – 30 May 1987: The first Private Bin incident

25. The plaintiff alleges that he attended the Private Bin nightclub in Canberra to celebrate the birthday of a female friend. He alleges that when he was sitting at a table the third defendant, Philip Reed, approached his table and ordered him to return to barracks. The plaintiff declined. Mr Reed is alleged to have “grabbed him by the front of his

jumper and began pushing him backwards". It is alleged that Mr Reed only stopped because he was instructed to do so by one of the club's bouncers.

26. The plaintiff is alleged to have been fearful that Mr Reed was about to engage in a more severe assault of him than the one that actually occurred. Thus the allegation appears to be of both a battery and an assault.

27. No particular injury is alleged.

Incident 10 – 31 May 1987: second Private Bin incident

28. This is alleged to have occurred later during the same visit to the Private Bin nightclub. Mr Reed is alleged to have approached the plaintiff and ordered him to return to barracks. The plaintiff alleges: "When an unidentified civilian intervened a fight was started by Company Sergeant Major Reed and Lance Corporal Thorp. During this altercation the plaintiff was repeatedly assaulted by Company Sergeant Major Reed, Lance Corporal Thorp and an unidentified staff cadet. The plaintiff was held from behind and was repeatedly punched around the head and body."

29. The injury alleged is bruising and a severely broken nose for which the plaintiff was treated at the Royal Canberra Hospital.

30. Each of these incidents is particularised by reference to identified passages of a document which was prepared for the purposes of submission to the Defence Abuse Response Task Force entitled "Personal Account" which was exhibit JK 2 of the plaintiff's affidavit dated 8 April 2014 (**the DART Personal Account**).

31. The plaintiff alleges that in relation to incidents 1 to 8 the staff cadets in question were acting in the course of their employment as staff cadets at the Royal Military College Duntroon tasked by the first defendant with the assimilation, induction, training and discipline of junior staff cadets. The plaintiff alleges that the conduct of the second and third defendants and other senior staff cadets was either authorised by the first defendant or was conduct authorised by the first defendant that was performed in a wrongful and unauthorised manner. It is alleged that the conduct of which complaint is made was done in the intended performance of the tasks which the second and third defendants and other senior staff cadets were employed to perform.

32. It is alleged that incidents 1 to 8 occurred in the plaintiff's workplace at the Royal Military College, Duntroon. Incidents 9 and 10 are alleged to have occurred away from the plaintiff's workplace "but while the plaintiff was supposed to be on duty as a company orderly but was absent without leave in the local area."

33. The first defendant is alleged to have been negligent in:

    (a) failing to provide a safe system of work.

    (b) failing to provide [any] proper system of effective supervision of instructing staff and senior Staff Cadets, particularly with respect to their assimilation, induction, training & discipline of junior Staff Cadets.

    (c) Failing to respond appropriately to complaints of previous misconduct ("bishing") by senior Staff Cadets …

    (d) Failing to respond appropriately to complaints by junior Staff Cadets of previous misconduct ("bastardization") by senior Staff Cadets …

34. A claim for causally related economic loss is also identified in the following manner:

> By reason of the negligence of the first defendant the plaintiff was subjected to continual bastardization and workplace bullying that adversely affected his performance as a staff cadet, he was subjected to a series of assaults that ended with the plaintiff's assault of a senior staff cadet, and the combination of these events resulted in the plaintiff being forced to resign his appointment as a staff cadet … As a result, the plaintiff failed to graduate as a Lieutenant in the Australian Regular Army and suffered damage as a result.

35. There is also an allegation that the first defendant was vicariously liable for the actions of the staff cadets identified in incidents 1 to 10 and that the first defendant owed to the plaintiff a non-delegable duty of care.

36. The relief claimed is:

> (a) Damages;
>
> (b) Aggravated damages;
>
> (c) Exemplary damages;
>
> (d) Damages by way of compensation for earnings the plaintiff would have earned had he graduated from Duntroon as a Lieutenant and entered the Australian Regular Army;
>
> (e) Interest;
>
> (f) Costs.

37. Looked at overall, if the plaintiff established the assaults and batteries (which I will refer to subsequently simply as assaults) alleged in the individual claims any damage arising directly from them would, on any view, be modest. However, the more significant allegation is that as a consequence of the overall course of conduct of persons for whom the Commonwealth is alleged to have been responsible, the plaintiff was "forced to resign his appointment as a staff cadet", did not graduate as a lieutenant in the Australian Regular Army and suffered a loss of earnings. The allegation is more significant because it gives rise not only to the potential for a more significant claim for damages, but also to more difficult causation issues. That is because the exercise of comparing the situation in which the plaintiff would have been had it not been for the incidents in question and the position in which the plaintiff in fact found himself is one which would raise more complicated issues.

Limitation Act

38. The events in question occurred in 1987. Section 36 of the Limitation Act, in its present form, does not permit an extension of time to be granted in relation to personal injury proceedings to which s 16B of the Act applies. That is because s 36(5)(a) of the Act provides that s 36 does not apply to causes of action to which s 16B of the Act applies. Section 16B(1) provides that s 16B applies to causes of action for damages other than compensation to relatives claims or claims to which s 16A applies. The category of case covered by s 16B would cover the claim made by the plaintiff. Sections 16B and 35(5) were introduced by s 58 of the *Civil Law (Wrongs) Amendment 2003 (No 2)* (ACT) on 9 September 2003. Subsequently the legislature had second thoughts about the application of s 16B to causes of action which had arisen prior to its enactment. The *Limitation Amendment Act 2005* (ACT) inserted s 100 into the Limitation Act which provided:

> **100 Application of amendments made by Civil Law (Wrongs) Amendment Act 2003 (No 2)**

(1) Section 16B (Other claims for damages for personal injury) and section 30B (Special provision in relation to children—claims relating to health services) do not apply to a cause of action that arose before 9 September 2003.

Note This is the date the section commenced.

(2) This section expires 5 years after the day it commences.

(3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

39. Because of the operation of s 88 of the *Legislation Act 2001* (ACT) s 100 continues to operate notwithstanding that it is not included in the current republication of the Act. Because s 16B does not apply to causes of action that arose before 9 September 2003 the reference to causes of action which are excluded from the operation of s 36 in s 36(5) no longer captures the plaintiff's causes of action. As a consequence, so far as the present proceedings are concerned, s 36 is a provision permitting an extension of time and is available in the present case notwithstanding its application is, in relation to causes of action arising after 9 September 2003, precluded by the terms of s 36(5).

40. Section 36 provides:

36 Personal injuries

(1) This section applies to any action for damages if the damages claimed consist of or include damages in relation to personal injuries to any person.

(2) If an application is made to a court by a person claiming to have a cause of action to which this section applies, the court, subject to subsection (3) and after hearing such of the persons likely to be affected by that application as it considers appropriate, may, if it decides that it is just and reasonable so to do, order that the period within which an action on the cause of action may be brought be extended for the period that it determines.

(3) In exercising the powers given to it by subsection (2), a court shall have regard to all the circumstances of the case, including, for example, the following:

(a) the length of and reasons for the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;

(c) the conduct of the defendant after the cause of action accrued to the plaintiff, including the extent (if any) to which the defendant took steps to make available to the plaintiff means of ascertaining facts that were or might be relevant to the cause of action of the plaintiff against the defendant;

(d) the duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he or she knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps (if any) taken by the plaintiff to obtain medical, legal or other expert advice and the nature of the advice the plaintiff may have received.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) The powers given to a court by subsection (2) may be exercised at any time notwithstanding—

(a) that the limitation period in relation to the relevant cause of action has ended since the cause of action accrued; or

(b) that an action in relation to such personal injuries has been begun.

(5) This section does not apply in relation to a cause of action to which either of the following applies:

(a) section 16B (Other claims for damages for personal injury);

(b) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

(6) Also, this section does not apply in relation to the period mentioned in section 30B (2) (Special provision in relation to children—claims relating to health services).

41. In *Stefek v Garnama Pty Ltd* [2014] ACTSC 140 (*Stefek*) I summarised the approach to be taken to applications under s 36 as follows:

20. The power to extend time may be exercised notwithstanding that the limitation period has expired and may be exercised after the relevant proceedings have been commenced: s 36(4).

21. In deciding whether or not it is just and reasonable the Court is obliged under s 36(3) to have regard to "all the circumstances of the case" including six specific matters, which are listed in paragraphs (a)-(f). I will refer to the terms of those paragraphs below.

22. The primary question is whether, in all the circumstances, it is "just and reasonable" to grant the application: s 36(2); *Sessions v Phengsiaroun* [2008] ACTSC 132 at [40].

23. A material, and often the most important, question is whether, by reason of the time which has elapsed, a fair trial is possible: *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 547-548, 550, 555. *Sessions* at [41]; *Laws v Web Scaffolding* [2010] ACTCA 3 at [37].

24. The overall onus is on the plaintiff to demonstrate that it is just and reasonable to extend time. That onus remains with the plaintiff throughout. If a defendant, however, wishes to rely on actual prejudice then the defendant bears the onus of adducing or pointing to evidence sufficient to establish that fact: *Brisbane South* at 547, 551, 553-554, 566-567; *Laws v Web Scaffolding* at [34]-[36].

25. The criteria specifically referred to in s 36 are not exhaustive. However, they do point reasonably comprehensively to areas of relevance: *Sessions* at [42].

26. One matter not mentioned in s 36 is the relevance of a possible cause of action vested in the plaintiff for damages for any neglect or default on the part of the plaintiff's solicitors in prosecuting the plaintiff's claim. In general, notwithstanding the availability of a claim against the plaintiff's solicitors, the primary wrongdoer should be looked to for compensation although there may be occasions when a proper balance between the blame to be attributed to the plaintiff's solicitor and prejudice to a defendant would mean that an applicant under s 36 should be required to pursue his or her solicitors: *Daroczy v B & J Engineering Pty Ltd (in liq)*(1986) 67 ACTR 3 at 18; *Noja v Civil and Civic Pty Ltd & Ors* (1990) 93 ALR 224; *Sessions* at [42].

27. The prospects of success of the proposed plaintiff are also a matter which may be considered: *Paramasivam v Flynn* (1998) 90 FCR 489 at 496-497; *Doyle v Gillespie* (2010) 4 ACTLR 188 at [43].

28. When assessing the prejudicial effects of delay it is relevant to consider the whole of the delay between the cause of action arising and a hearing of the proceedings if leave is granted rather than the marginal delay between the end of the limitation period and such a hearing: *Brisbane South* at 548-549, 554-555, 556

29. Prejudice may be presumed as a consequence of the effluxion of time even if actual prejudice is not demonstrated: *Brisbane South* at 551, 556.

30. Where actual prejudice of a significant kind is demonstrated or a real possibility then it is more in accord with the legislative policy underlying limitation periods that the

plaintiffs lost right should not be revived than the defendant should have a spent liability reimposed: *Brisbane South* at 555.

42. These are the principles which I have applied in determining the present application.

Evidence relied upon

43. The plaintiff relied upon his affidavits dated 8 April 2014, 11 November 2014, 9 December 2014 and 27 April 2015.

44. On the substantive extension of time application the defendants relied upon the affidavits of Damien Kelly dated 14 April 2015, 15 April 2015, 17 April 2015, 20 April 2015 and 28 April 2015. They also relied upon the affidavit of Michael Lysewycz of 17 December 2014, Melita Parker of 14 April 2015 and two affidavits of Sergio Avellaneda dated 15 April 2015 and 1 May 2015.

45. A number of exhibits were also tendered to which I refer below. They included two bundles (Exhibits 4 and 5) which contained documents obtained from the Department of Defence and the Australian Federal Police.

Basic Chronology

46. In order to provide some overall context for the reasons which follow it is useful to outline a basic chronology.

13 January 1987	Plaintiff became a cadet at the Royal Military College, Duntroon (age 18).
February - May 1987	Incidents 1 to 8 alleged to have occurred.
30-31 May 1987	Incidents 9 to 10 alleged to have occurred. Following incident 10 the plaintiff left the Private Bin. He subsequently returned and stabbed the second defendant in the head. He was charged with malicious wounding.
18 June 1987	Plaintiff submits his letter of resignation to the Chief of General staff.
10 July 1987	Plaintiff completes his discharge procedures at Duntroon.
12 July 1987	Plaintiff returns to Melbourne.
24 July 1987	Plaintiff is discharged from Australian Regular Army.
9 August 1987	Hoddle Street Massacre occurs.
18 April 1988	Plaintiff is committed for trial in the Supreme Court of Victoria.
6 June 1988	Plaintiff is charged in the Supreme Court of Victoria with seven counts of murder and 46 counts of attempted murder.
28, 31 October 1988	Sentencing hearing in the Supreme Court of Victoria occurs.
10 November 1988	Plaintiff is sentenced for Hoddle Street Massacre and receives a sentence of life imprisonment with a non-parole period of 27 years: *R v Knight* [1989] VR 705.

29 June 2012	Plaintiff's application for parole is rejected.
26 November 2012	Defence Abuse Response Task Force is established.
30 November 2013	Plaintiff submits his DART Personal Account in relation to his experiences at Duntroon to the Defence Abuse Response Task Force and makes a claim under the Defence Abuse Reparation Scheme.
9 December 2013	Adult Parole Board decides that the plaintiff would not be granted parole on the expiry of his minimum term 8 May 2014 and further "that there is no prospect of an order for release on parole in the foreseeable future."
1 January 2014	Plaintiff writes to the ACT Supreme Court seeking assistance of the Registrar with the initiation of proceedings.
27 March 2014	*Corrections Amendment (Parole) Act 2014* (Vic) enters into force.
23 May 2014	Plaintiff commences these proceedings.

The alleged plea agreement as an explanation for the delay in the commencement of proceedings

Introduction and plaintiff's submissions

47. Of central importance to the plaintiff's claim for an extension of time was his explanation for the delay in commencing proceedings. The relevant delay is the period between the occurrence of the events between February and May 1987 and the commencement of proceedings on 23 May 2014. That is a period of approximately 27 years.

48. The central contention in Mr Knight's affidavit of 8 April 2014 was that when, in early October 1988, he decided to plead guilty to all charges in the Presentment filed against him in the Victorian Supreme Court he gave an undertaking to instruct his counsel not to raise the issue of bastardisation at his plea hearing. (The Presentment is the equivalent of an indictment: see *R v Parker* [1977] VR 22 at 24.) His evidence was: "I took this undertaking to include any other proceedings that I might consider initiating (i.e. civil proceedings)." He then contended that after the Adult Parole Board's decisions of 29 June 2012 and 9 December 2013 "I no longer consider myself bound by the undertaking I gave in 1988 not to initiate proceedings against the Commonwealth in relation to the bastardization I was subjected to at Duntroon."

49. Because of the length of the delay in commencing proceedings in the present case the explanation for that delay is very significant. It is therefore necessary to make findings as to whether or not there was a plea agreement such as that alleged by Mr Knight or, if there was not, whether Mr Knight believed during the relevant period that there was.

50. The undertaking alleged to have existed, or to have been understood by Mr Knight to have existed, is an unusual one in that it was one which was for the benefit of the Commonwealth given in proceedings brought by the Crown in right of Victoria. There was no satisfactory theory propounded by Mr Knight as to why such an undertaking might have been sought as part of any plea agreement. The plaintiff invited the Court

to draw an inference that the Department of Defence instigated the alleged offer that Mr Knight not raise the issue of bastardisation at Duntroon in court in exchange for the Victorian authorities not opposing the setting of a minimum non-parole term. He submitted that the inference was open based upon the following matters:

(a) the Victorian authorities raised the issue despite the subject of defence being a Commonwealth, not a State, matter;

(b) the then commanding officer of the Corps of Staff Cadets, Lieutenant Colonel David Kibbey attended the sentencing hearings;

(c) the plaintiff had informed the Office of Public Prosecutions prior to the plaintiff's plea that the defence would not be raising the issue of bastardisation; and

(d) the creation of a corporate file titled "Ex-staff cadet Julian Knight (3204059)-Hoddle Street killings - DALS Aspects" within the office of the Director of Army Legal Services.

51. The plaintiff submitted that it would be counterintuitive for the plaintiff to have provided detailed notes to his lawyers alleging abuse he suffered at Duntroon and make similar claims in the media but not raise those claims during his plea hearing. He submitted that he would have pursued his rights through other court proceedings if not for the plea agreement he alleges he entered into.

Transactions relevant to allegation of plea agreement

52. Although there was some early confusion about whether or not the Victorian Legal Aid Commission would act for Mr Knight, by October 1987 the Commission was representing him. Mr Michael (Mick) O'Brien, Associate Director (Criminal Law Division) of the Legal Aid Commission, was the solicitor with carriage of the matter on Mr Knight's behalf. Mr O'Brien had retained barristers Robert Richter QC and Richard Pirrie to act on Mr Knight's behalf.

53. Mr Knight's evidence in his affidavit of 8 April 2014 was:

> In early October 1988, following negotiations with the OPP, I decided after consultation with counsel (Robert Richter QC, Richard Pirrie and Michael O'Brien of the Legal Aid Commission of Victoria), and between my counsel and the OPP, that I would plead guilty to all charges in that Presentment filed against me. [Portions of the affidavit not admitted into evidence] I gave an undertaking to instruct my counsel not to raise the issue of bastardization at Duntroon in court during my plea hearing. I took this undertaking to include any other proceedings that I might consider initiating (i.e. civil proceedings).

54. In oral evidence he said:

> … it's my belief that a firm agreement had been reached. A firm agreement had been reached as early as early September when I issued those written instructions.

55. The written instructions which he referred to were instructions given to Mr O'Brien in a letter dated 4 September 1988 in which Mr Knight wrote:

> In light of the plea bargain that you and Mr Richter have arranged with the prosecution I hereby instruct you to enter a plea of guilty on my behalf with the Director of Public Prosecutions.

56. For present purposes the significance of the written instructions is the reference to "the plea bargain". It was this document that Mr Knight pointed to as corroborating his evidence as to his understanding.

57. Mr Knight's evidence must be considered in the light of the available contemporaneous documentary records and other evidence as to what occurred during the relevant period.

58. On 28 October 1987 Mr O'Brien wrote to Mr Knight outlining steps taken in relation to his matter. The letter included the following reminder:

> Just a reminder that you are to record as fully as you can incidents of bastardisation at the Royal Military College.

59. Mr Knight did in fact document matters as a result of this request. Two handwritten documents from 1987 (Exhibit JK 11) were admitted into evidence. One of those is dated December 1987, the other undated. I will refer to these as the Bastardisation Instructions.

60. A typed file note dated 28 October 1987 recorded that the previous day, 27 October 1987, Mr O'Brien had a lengthy conference with Mr Knight. The file note records, amongst other things:

> Julian is keen to look at his Army records and I have agreed that I will send them to him for him to peruse and if he particularly wants any of them I will arrange for a photocopy. He is to write out incidents of bastardisation that occurred while he was at the Royal Military College Duntroon. Julian is also keen to have newspaper clippings relating to the shootings. I will contact John Grigor in regard to this and speak to him about the advisability of providing those.

61. Following advice on 19 April 1988 from Mr Richter QC and Mr Pirrie, senior and junior counsel retained by Mr O'Brien to represent Mr Knight, Mr O'Brien wrote to Dr Kenneth Byrne, a clinical psychologist, on 29 April 1988. The letter sought a report from Dr Byrne not directed to the possible existence of any state of mind defences. Instead:

> The report is to be prepared on the basis that these matters will proceed as a plea and that Julian's condition falls short of McNaughton insanity but is nevertheless one of diminished responsibility by reason of some psychiatric or psychological condition.
>
> We would like the report to cover the following matters:
>
> …
>
> (c) A careful discussion of his 'bastardisation' at Duntroon and an exploration of the effects of the 'warrior syndrome' and its genesis vis a vis father, books, movies and television.

62. On 26 July 1988 Mr O'Brien wrote to Mr Knight about the present state of his proceedings. The letter referred to the fact that Mr O'Brien was endeavouring to make arrangements for him to undergo magnetic resonance imaging at the Royal Melbourne Hospital. The letter continued:

> As you are aware, I am at pains to try to keep you advised as to what is happening with your case. However, until such time as all material is available I cannot be definitive because it would be unwise to be wedded to any particular course unless and until we are sure that no other course is available. The expectations are that the Magnetic Resonance Imaging will not change the present situation where it appears that a certain course is the one that will achieve the best result for you. You seem to be preoccupied with a number of other matters. Rest assured that I am working in close consultation with Mr Richter and that no stone will be left unturned on your behalf.

> The present thinking, and as I have indicated there is nothing definitive about this, is that a certain course is in your best interests. We, in following that course, will be interested to divert the Court's attention as much as possible from the detailed circumstances of the matters with which you are charged. We will also be concerned not to present your case in such a way as to cause the Crown to desire to call evidence to rebutt [sic] any aspect of it. In the last analysis it does not matter if, for example, the full details regarding bastardisation are not brought out, if that means in the long run that a better result is secured for you.
>
> To sum up, at this stage, subject to the Magnetic Resonance Imaging, it is the view of myself and Counsel that the course we have been discussing is the appropriate one to follow. In that event the likelihood is that we would call only the witness that I mentioned to you.
>
> Of course, as I indicated to you yesterday, the final course to be followed will be a matter to be determined by Mr Richter in consultation with you.

63. Mr Knight understood at the time that the strategy that his lawyers were recommending to him was that his case be presented in such a manner as would not cause the Crown to call evidence to rebut any part of it.

64. On 30 August 1988 Mr O'Brien prepared another file note. The file note makes it clear that Mr O'Brien had a conference with Mr Knight on 30 August 1988. It records:

> In regard to the reports from Dr. Sime and Mr. Watson-Munro I indicated to Julian that at the time they were obtained we were looking for a mental defence if possible. I took Julian to those parts of the report that seem to suggest that there was a mental defence and indicated that it was our view that we could not sustain such an approach in Court. Julian seemed to accept this.
>
> I then indicated to Julian that while we had made it quite clear that we were thinking that his best interests would be served by a plea of guilty we had not firmly formalized that position and that I now wanted him to do so. I requested Julian to write to me indicating that he would be pleading guilty to the counts on the Presentment and that he had no objection to my advising the DPP of that decision.
>
> …
>
> Julian indicated that he was prepared to allow us to conduct the plea without any interruption so long as there were no comments along the lines of him being 'prepared to kill but not to die'. He also indicated that he would react to comments from the Judge about any deterrent aspect of any sentence imposed. Julian indicated that it should be clear that mass killings were a spontaneous act and that the issue of deterrent did not arise in relation to them.
>
> Julian also wanted an indication from me as to the sort of sentence that might be imposed. I indicated to him that I thought that he was looking at life with a minimum somewhere from 25 to 30. I told him that I understood that Richter would feel that it would be a good result if we got life with a minimum of 30. Julian indicated that so long as he got some minimum term he would feel satisfied. He then wanted to know at what stage an appeal would be launched. I explained to him that it was fruitless to talk at this stage it just depended how things turned out. *I explained that at the plea we would have to be careful not to do anything that might give cause to the Crown to want to call evidence, especially in regard to bastardization.* I also discussed with Julian the possibility that the trial Judge might remand him in custody for a psychiatric report. We discussed what might occur in regard to this, Julian indicating that he would not cooperate if Dr. Bartholomew was sent. I indicated that this could be sorted out and that the report could be obtained from someone else. I pointed out that if this in fact eventuated that it would be in Julian's best interest to co-operate rather than to be constructive [this should be "obstructive"]. He seemed to accept this.
>
> [Emphasis added.]

65. Probably as a result of the request made of him by Mr O'Brien on 30 August 1988, on 4 September 1988 Mr Knight sent the letter quoted at [55] above.

66. On 9 September 1988 Mr O'Brien prepared another file note recording that on 8 September 1988 Mr Richter had telephoned him and advised that Mr Knight's plea would be heard somewhere around mid-October and that the judge would be Hampel J. It then provided:

> We discussed the conduct of the plea and Mr. Richter indicated that he would be going back to Joe Dickson and asking him for an undertaking that he would reiterate what was said at the committal proceeding i.e. that the Crown did not think it inappropriate that there should be a minimum term in this case. I also advised Mr Richter that there were a couple of aspects of the Crown's presentation that were unpalatable to Julian Knight and that I would provide him [Mr. Richter] with a memorandum setting these out so that Mr. Richter could discuss these with the prosecutor.
>
> …
>
> Mr. Richter and I also discussed the intimation that we had received from the prosecutor that if we stressed too much the issues of bastardization, that the prosecutor was under instructions to call evidence to rebutt [sic] those matters.

67. Mr Knight denied any awareness of the Crown having said at the committal proceeding that it was not inappropriate that there be a minimum term in this case. He said he understood up until giving instructions to plead guilty that whether or not a minimum term was opposed was dependent upon the issue of bastardisation not being raised.

68. The file note also discussed the necessity to obtain an updated report from Dr Sime, a forensic psychologist. The same day Mr O'Brien wrote to Dr Sime disclosing that Mr Knight would be pleading guilty to the charges of murder and attempted murder and requesting the preparation of an updated report. The letter provided:

> We would like to report to cover the following matters, some of which have already been covered in your earlier report but those could be incorporated in this one:
>
> …
>
> (c) A discussion of his perception of 'bastardization' at Duntroon and an exploration of the effects of the 'warrior syndrome' and its genesis vis a vis father, books, movies and television.
>
> ...
>
> There are two matters which need to be kept in mind; the first is that the prosecution have advised us that if we make too much of the issue of alleged 'bastardization' they are under instruction to call evidence to rebutt that. Accordingly, we will not be making overly much of the issue of 'bastardisation'. The second point that should be borne in mind is that to date Julian's surrender has been explained in terms of military training i.e. that when one runs out of ammunition the appropriate course is to surrender to fight another day. However, we have consulted military personnel and they have indicated that this is not consistent with military training. Therefore, that explanation of the apparent contradiction between his state of desire to die or be killed and his peaceful surrender will not do.

69. On 25 October 1988 Mr O'Brien prepared a file note arising from his conference with Mr Knight on 24 October 1988. The file note records that Mr Knight handed him a letter dated 22 October 1988 in which he provided instructions confirming what he had indicated to Mr O'Brien at the Supreme Court on Wednesday 19 October, namely, that he would plead guilty to the counts on the presentments.

70. Included in the file note was the following:

> In discussions with Joe Dixon [sic] of Counsel for the Director of Public Prosecutions, I indicated to him that Julian Knight was aggrieved by references to the fact that he was prepared to kill but not to die. Mr. Dixon [sic] of Counsel indicated that he would moderate such comments.
>
> …
>
> In the course of the conversation with Mr. Dixon [sic] of Counsel for the Director of Public Prosecutions, he enquired of me as to whether we were going to make much of the alleged bastardization. I informed Mr. Dixon [sic] that we were not. He indicated that had we been he would have provided some material to us in relation to that provided by the Army which was very sensitive about such allegations. I later confirmed with Richter Q.C. that we in fact were not going to make a great play of bastardization.

71. In cross-examination the plaintiff gave evidence of a conference with Mr O'Brien, Mr Richter QC and Mr Pirrie dealing specifically with the issue of whether or not to raise bastardisation. Mr Knight said:

> … I can recall having a case conference meeting with all three counsel, Mr Richter, Mr Pirrie and Mr O'Brien in which I was left in no uncertain terms as to the strategy that would be adopted, in addition to contesting any allegations of bastardisation. It was explained to me specifically by Mr Richter that [Mr Dickson] would go from being quite reasonable in his submissions to the Court to being one where quite colourful language would be used, and I remember Mr Richter giving an example and that was along the lines of [Mr Dickson] would then start talking about the streets running with blood. There was also an indication given to me by Mr Richter that if we did raise the issue of bastardisation as part of the plea becoming a contested plea that the Crown witness Mr-sorry, Dr Bartholomew, would go, quote, "from being our best friend to our worst enemy," and that there would be a contest as far as the psychological and psychiatric evidence was concerned.

72. The defendants, with the benefit of an authority from the plaintiff, took steps to investigate from senior and junior counsel for Mr Knight whether they had any recollection of:

    (a) any plea agreement between Mr Knight and the Office of Public Prosecutions;

    (b) any discussions with Mr Knight as to a potential plea agreement;

    (c) any negotiations between them or Mr Knight's other legal representatives and the Office of Public Prosecutions as to any plea agreement;

    (d) any instructions received from Mr Knight to not raise the issue of bastardisation at Duntroon during the plea hearing;

    (e) Mr Knight's understanding of the effect of any such plea agreement.

73. Mr Richter's recollection was that:

> The events surrounding the Plea for Julian are now so shrouded in the mists of time that I have no recollection at all of the matters upon which you request information …
>
> I wish I could be of greater assistance but you no doubt appreciate what the effluxion of time does to the grey matter.

74. Mr Pirrie, junior counsel for Mr Knight, said in a conversation with Mr Kelly that his reaction to the reference to the alleged plea agreement was "that doesn't sound right. I don't recall anything along those lines". He did not remember the plaintiff's plea being conditional and thought that, if it was, that was the sort of thing which he would recall.

75. Mr O'Brien was also contacted and stated in an email to the defendants' solicitors: "I have no recollection of the plea agreement referred to by Knight in his affidavit. Further, some aspects of it are contrary to my recollection of what actually occurred."

76. His email describes discussions with the prosecution on the day of the plea in which counsel for the Crown proposed dropping charges relating to Mr Knight shooting at police. Mr O'Brien was instructed not to agree to that. The email continues:

> On that same day, prior to the plea commencing, we were advised that personnel from Duntroon were present in court. They would be called, if necessary, to rebut claims made on Knight's behalf of bastardisation while he was at Duntroon. All material we had from Duntroon suggested that Knight, a first-year cadet, did not follow conventions and/or practices imposed by more senior cadets with regard to e.g. clothing and recreational venues. We had already decided, owing to the paucity of evidence we could resource, not to make "a big thing" of alleged bastardisation. Richter says that to the best of his recollection there was some reference to it.
>
> You will appreciate that these events took place a long time ago. Despite that I am confident:
>
> - the prosecution had, very early in the proceedings, not only said it would not oppose the imposition of a minimum term, but had also advised the court (Melbourne Magistrates Court) that it considered this case an appropriate one for the imposition of a minimum term. Hence on the day of the plea, this was not an issue.
> - The prosecution offered to withdraw or not proceed with all counts alleging Knight shooting at the police members which offer, on Knight's instructions, was rejected; and
> - the prosecution advised us that military personnel were in court and would be called to rebut allegations of bastardisation made on Knight's behalf in the course of the plea.

77. Enquiries were also made of Judge Julian Leckie who appeared as junior counsel for the Crown. He was asked whether he could recall, or had any documents relating to, any plea agreement between Mr Knight and the Office of Public Prosecutions, any discussions or notes of negotiations between the Crown and Mr Knight in relation to any plea agreement or any instructions received from the Office of Public Prosecutions to not raise the issue of bastardisation at Duntroon during the plea hearing. Judge Leckie communicated to the solicitors for the defendant that he had no documents and no memory of such an arrangement.

78. Mr Dickson QC, senior counsel who appeared on behalf the Crown, died in 2006.

79. The solicitors for the defendants issued a notice for non-party production to the Office of Public Prosecutions. The notice sought any "documents, records and information relating to any plea agreements entered into by Mr Julian Knight… in respect of the charges Mr Knight faced for crimes committed on 9 August 1987". The Office of Public Prosecutions indicated that it had no document falling from the terms of the notice issued but provided a memorandum which set out the Crown's reasons for the decision not to submit that the fixing of a minimum term would be inappropriate. That was a memorandum dated 11 November 1988 prepared by Mr Dickson QC. I infer from the content of the memorandum that it was prepared in response to some media-generated controversy about whether or not the setting of a minimum term was appropriate. The memorandum provided:

I have been asked to provide a short opinion on whether the Director should consider appealing against the sentence which was passed, namely an effective sentence of life imprisonment for each count of murder and 10 years imprisonment for each count of attempted murder, such sentences to be served concurrently, with a minimum of 27 years to be served before Knight can become eligible for parole.

There has been a great deal of media hype surrounding this case, and particularly surrounding the sentence which was passed, including as it did a minimum term. In my opinion the present state of the law in Victoria is such that it was entirely appropriate for the learned Sentencing Judge to fix a minimum term and, further, that the minimum term that he fixed was one which is not inadequate. During the course of the plea and whilst making submissions on behalf of the Crown, I told the Judge that the Crown did not submit that the fixing of a minimum term would be inappropriate. This decision was made on the following bases, namely-

(a) Knight at the time of the incident was 19 years of age.

(b) He had no prior convictions.

(c) He pleaded guilty, thereby saving the State from a trial which would probably have lasted approximately 4 months and re-kindled the emotions of many, many witnesses.

(d) From the moment of his arrest Knight was entirely cooperative with the police; and

(e) The Crown had to accept that Knight suffers (or at least on that night was suffering) from a distinct personality disorder.

It has to be remembered that Knight has been sentenced to be imprisoned for the term of his natural life. The minimum term is one which he will have to serve as to every hour of every day and at the conclusion of that 27 years, it cannot be said that he will necessarily be released.

I therefore advise that in my opinion it would not be appropriate for the Director of Public Prosecutions, at this stage at least, to institute proceedings by way of appeal to endeavour to increase the minimum term.

…

80. The plaintiff relied upon the state of recollection of Mr Tim Watson-Munro, a consultant psychologist from whom a report was sought by Mr O'Brien in 1988. Most of the statement signed by Mr Watson-Munro was not admitted into evidence. He did, however, give oral evidence. In examination-in-chief by Mr Knight the following questions were asked and answers given:

MR KNIGHT: ... Returning to your letter, Mr Watson-Munro, you stated that:

My understanding referrable to this decision [to not require him to provide viva voce evidence at the hearing] was that there were concerns regarding my descriptions of bastardisation at Duntroon and that in exchange for agreeing not to raise this part of your life, a minimum term would be set concerning your life sentence?

---Yes

Could you explain to the court what the basis was for that understanding or used for that understanding?---Discussions with my late colleague Dr David [Sime] and discussions, as best I recall, with Mr Michael O'Brien, who was the solicitor on the record instructing Mr Richter.

…

MR KNIGHT: Mr Watson-Munro, in paragraph 6 of your letter, you wrote, starting two sentences into the paragraph:

I have a recollection that there were discussions within the legal precinct concerning your sentence prior to the hearing and that a figure of a minimum term of 27 years was well known to the relevant parties. This, as I understood it, related to an agreement that in

exchange of a plea of guilty, the community would be spared the additional trauma of what had been a lengthy-what would have been a lengthy trial involving the call of witnesses and so on. It also related to there being no mention of the bastardisation issue?

---Yes, that is my recollection.

In relation to the first part of that passage, "I have a recollection that there were discussions within the legal precinct," by referring to the legal precinct, could you elaborate on who you are specifically referring to there and whether it involved any of the counsel that were involved?---Your case, as you will be aware, was a very high profile case and there was clearly discussion amongst, barristers and lawyers about your pending plea and as I recollect there was discussion about there being a minimum term and I recollect a figure of 27 years was mentioned. I cannot recall who mentioned those figures. Certainly it did not come from Mr Richter. I can say that categorically. But it was fairly well-known, from my best recollection amongst the---

[objection]

MR KNIGHT: With respect to the setting of the minimum term, Mr Watson-Munro, could that figure have been provided to you by either Mr Pirrie or Mr O'Brien?---I do not recall. I don't recall. It's a long time ago. I can't say categorically who mentioned that figure and I have no desire to mislead the court.

You've then gone on to say in your letter: "This, as I understood it, related to an agreement that in exchange for a plea of guilty be community would be spared the additional trauma of what had been a lengthy trial involving the call witnesses and so on. It also related to there being no mention of the bastardisation issue"?---Yes.

What was the basis of that understanding, Mr Watson-Munro?---Similar to the earlier one. It was just general discussion and I don't put it any higher than that. I cannot name people who made those comments but I do recall those comments.

81. In cross-examination he identified that he had no recollection of discussing the sentence or the minimum term with Mr Knight and that only in the 12 months prior to the hearing had he had discussions with Mr Knight in the course of which Mr Knight put his assertion that there had been a firm plea agreement that he would not raise the bastardisation issue.

82. At the sentencing hearing before Hampel J on 28 October 1988 Mr Richter QC made submissions addressing the plaintiff's background and progress at the Royal Military College. During the course of those submissions Mr Richter QC said:

> We do not make out a case where we say this man was bastardised in any culpable sense and we want to make that very, very clear. There is a difference between perception of a person who, in the end, obviously turns out to have a mind that was impaired in a number of ways, and the objective reality of what happened. One can accept and understand that in a place like Duntroon, as in a lot of boarding schools and various institutions, where young men are brought together, certain practices of rough play and other problems may occur, and most people take them in their stride.
>
> We do not assert that there was a deliberate programme of brutalisation and bastardisation, although the nature of the institution is conducive almost by definition to some rough play.
>
> Nevertheless, as far as Julian Knight's own perception, be it well founded or not, he felt that he was being picked on, and he felt that he was being subjected to treatment that was unwarranted. He would occasionally go AWOL, but he felt that he was penalised for it more than others. Once again whether that be true or not is not really a matter of concern. If it was true, it would indicate that or rather tend to indicate a number of features with which we are not really concerned. If it was not true, all it indicates is that his perceptions were not as clear as they ought to have been.

83. He referred then to the incident involving the stabbing of Mr Reed.

The Corrections Amendment (Parole) Act 2014

84. Mr Knight's contention was that it was after the rejection on two occasions of his application for parole by the Adult Parole Board and the passage of the *Corrections Amendment (Parole) Act 2014* (Vic) (**CAP Act**) that led him to consider that he was freed of his earlier undertaking. Because of its unusual nature it is necessary to identify the terms of the CAP Act.

85. The CAP Act inserted a new section into the *Corrections Act 1986* (Vic). The second reading speech for the bill occurred in the Legislative Council on 18 February 2014 and in the Legislative Assembly on 13 March 2014. The long title for the Bill for this Act was:

> A Bill for an Act to amend the **Corrections Act 1986** to make special provisions in relation to the release of a prisoner on parole in respect of a sexual offence or a serious violent offence and to a prisoner whose parole has been previously cancelled, to clarify certain provisions relating to the procedures of meetings of the Adult Parole Board and for other purposes.

86. The amending Act commenced on 2 April 2014. The newly inserted s 74AA provides:

> **74AA Conditions for making a parole order for Julian Knight**
>
> (1) The Board must not make a parole order under section 74 in respect of the prisoner Julian Knight unless an application for the order is made to the Board by or on behalf of the prisoner.
>
> (2) The application must be lodged with the Secretary of the Board.
>
> (3) After considering the application, the Board may make an order under section 74 in respect of the prisoner Julian Knight if, and only if, the Board—
>
> (a) is satisfied (on the basis of a report prepared by the Secretary to the Department of Justice) that the prisoner—
>
> (i) is in imminent danger of dying, or is seriously incapacitated, and as a result he no longer has the physical ability to do harm to any person; and
>
> (ii) has demonstrated that he does not pose a risk to the community; and
>
> (b) is further satisfied that, because of those circumstances, the making of the order is justified.
>
> (4) The Charter of Human Rights and Responsibilities Act 2006 has no application to this section.
>
> (5) Without limiting subsection (4), section 31(7) of the Charter of Human Rights and Responsibilities Act 2006 does not apply to this section.
>
> (6) In this section a reference to the prisoner Julian Knight is a reference to the Julian Knight who was sentenced by the Supreme Court in November 1988 to life imprisonment for each of 7 counts of murder.

87. The legislation is unusual, specifically targeted at Mr Knight, and ensures that the Board cannot release him on parole.

Conclusion

88. In the light of the above my conclusions are as follows:

(a) There is no evidence apart from Mr Knight's written instructions referring to a "plea agreement" in any formal sense. Although in submissions made prior to the hearing Mr Knight had relied upon the evidence of Mr Tim Watson-Munro,

it is clear from Mr Watson-Munro's oral evidence, referred to above, that it provided no reliable corroboration of there being a plea agreement.

(b) There is no evidence to corroborate Mr Knight's evidence that he understood that there was not only an agreement involving an undertaking on his part, but also that it extended to proceedings other than the sentencing hearing.

(c) The documentary material that is available and the recollections of those persons, apart from Mr Knight, of which there is evidence is consistent with a forensic decision being made that it was in Mr Knight's best interests not to place too much emphasis upon the bastardisation issue in the sentencing proceedings. The approach reflected in the material prepared by Mr O'Brien is one which indicates that all potential avenues to advance Mr Knight's interests were pursued by his lawyers. Investigations were made with a view to exploring whether or not there was a mental illness defence available in relation to his conduct. When that proved to be an unsustainable matter to pursue at the hearing consideration was given to how best advance his interests in a sentencing hearing. The advice that he was given was that it would advance his interests if the sentencing hearing proceeded in a manner which:

    (i) diverted the Court as much as possible from the circumstances of the crimes committed; and

    (ii) did not provoke the Crown into calling evidence to rebut any fact asserted on Mr Knight's behalf.

(d) The forensic approach adopted on Mr Knight's behalf was, in fact, successful with the Crown not feeling obliged to rebut any assertions about bastardisation and a minimum term in the range predicted by Mr O'Brien being set by Hampel J.

(e) There is evidence that the Army was sensitive to allegations that there was some causal link between events at Duntroon and the offences charged. Documents in Exhibit 4 show the preparation of briefing material for the Crown prosecutor by Lieutenant Colonel Kibbey. There is no evidence of any involvement of the Army or Department of Defence (or the Commonwealth more generally) in any plea agreement or understanding.

(f) It is also clear from the file notes of Mr O'Brien, including aspects of the file notes which I have not set out, that, notwithstanding his age, Mr Knight was fully engaged with the process of considering the best approach to the charges and consideration of the advice that he was given by his lawyers. There are numerous references to requests made by Mr Knight including requests to obtain particular Army records that were available, transcripts, videos briefing material, newspaper clippings and records of interview.

(g) There was, as a result of discussion between Mr Richter QC or Mr O'Brien and Mr Dickson QC, an understanding that if too much emphasis was placed by Mr Knight on bastardisation issues then the Crown would call evidence to rebut that submission. There was nothing formal about that understanding, it remaining a topic of discussion between lawyers up until the day of the hearing. The forensic balancing exercise consistent with the desire to avoid

evidence in rebuttal of the submissions is reflected in the very careful submission made by Mr Richter QC in the transcript quoted above. While the judge may not have recognised the significance of the manner in which the submission was put there can be no doubt that what Mr Richter QC said was clearly targeted at Mr Dickson QC and avoiding the Crown calling evidence from Lieutenant Colonel Kibbey.

(h) Not only is there no evidence of anything more than a flexible understanding between lawyers about how the sentencing hearing might proceed, there is no evidence that any understanding or agreement extended beyond the sentencing hearing. Quite clearly, once Mr Knight was sentenced, subject to any appeal, the proceedings were over. There was no basis upon which he could have been constrained in other proceedings by what occurred at the sentencing hearing. There was no reason why the Crown in right of Victoria would have been concerned with subsequent proceedings brought against the Commonwealth. There was no undertaking given by Mr Knight not to raise bastardisation issues in proceedings other than the sentencing hearing.

(i) There is nothing at all in the material which corroborates Mr Knight's evidence that he had an understanding that, as a result of an agreement, he was precluded from raising issues of bastardisation in other proceedings. There is nothing in the material which provides any evidence that, prior to the present proceedings, he considered that he had given or was bound by any undertaking that extended that far. Mr Knight was at the time fully engaged with the legal process with which he was involved. Since that time he has demonstrated a significant capacity for litigation and legal matters. He is clearly intelligent. I do not accept Mr Knight's evidence that he had misunderstood what was going on at the time of his sentencing or the he was ever under a misapprehension that he was either for legal or moral reasons precluded from, or constrained in relation to, raising allegations of bastardisations in other proceedings.

89. As a result I do not accept Mr Knight's submission that the existence of a plea agreement or his understanding of an undertaking given as part of such a plea agreement provides an explanation for his failure to bring these proceedings at an earlier time.

Section 36 considerations

90. I now turn to address the various factors relevant to a determination as to whether it is just and reasonable to grant an extension of time. That is best done by addressing the non-exhaustive list of matters that must be considered which are set out in s 36(3) and then dealing with other matters relevant in the present case to the extent that they have not been dealt with by reference to the matters listed in s 36(3).

Section 36(3)(a) – the length of and reasons for the delay on the part of the plaintiff

Plaintiff's submissions

91. The essential explanation for the delay in commencement of proceedings was the existence of an undertaking on the plaintiff's part not to commence proceedings against the Commonwealth in relation to allegations of bastardisation at Duntroon or, at least, Mr Knight understanding that an undertaking he had given extended that far.

92. The plaintiff pointed to a series of decisions in which extensions of time have been granted so as to permit the commencement or continuation of civil proceedings up to 34 years after the relevant events took place. In particular he pointed to the decision of the New South Wales Supreme Court in *Smith v Department of Defence* (unreported, NSW Supreme Court, Sperling J, 6 April 1998) in which a claim for damages arising out of the bishing incident on 17 March 1987 was the subject of an extension of time.

93. He contended that within three weeks of being notified that he would not be granted parole on the expiry of his minimum term he took steps in January 2014 to initiate the present proceedings. He described this as having the result that "the undertaking given to him by the Crown in 1988 was effectively void". He submitted: "there is no way that the plaintiff could have foreseen that the undertaking given to him by the Crown in 1988 was going to be effectively voided after 26 years."

94. Had the plaintiff known in advance that he would not be released on parole at the expiry of the minimum non-parole term then he would not have given the undertaking to the Crown that he did in 1988. Further, the plaintiff would have instituted proceedings "to enforce his rights by way of an application for criminal injuries compensation and a civil claim for damages."

95. The plaintiff made the additional substantial submission that any dispute as to the nature or conditions of any plea agreement, or whether it existed, should be resolved in favour of the plaintiff. He submitted that it did not matter if no such undertaking was actually sought from the Crown. He submitted that it was his subjective belief in 1988 that it was of significance. In support of this submission he referred to a number of cases in civil and criminal law relating to issues of subjective belief as a sufficient defence to ground a cause of action:

    (a) *Maxwell v the Queen* [1996] HCA 46; (1996) 184 CLR 501 at 522;

    (b) *Taylor v Johnson* [1983] HCA 5; (1983) 151 CLR 422;

    (c) *Petelin v Cullen* [1975] HCA 24; (1975) 132 CLR 355 at 359-360;

    (d) *He Kaw Teh v The Queen* [1985] HCA 43; (1985) 157 CLR 523;

    (e) *Lean v The Queen* (1989) 1 WAR 348.

96. He therefore contended that there was a good reason for the delay.

Defendants' submissions

97. The defendants submitted that the relevant period of the extension of time is from the expiry of the limitation period in 1993 which, as at the date of the hearing, was a period of 22 years. They submitted that the various cases to which the plaintiff referred involving lengthy extensions of time each turned on its own facts and legislative framework and no generally applicable principle could be derived from the fact that in some cases extensions of time were granted where there had been a lengthy period of delay.

98. The defendants pointed to the documentary material relating to the circumstances surrounding the plaintiff's plea of guilty and sentencing hearing in 1988. They submitted that the documents obtained from Victoria Legal Aid made it plain that there was no plea agreement between the Crown and the plaintiff. Rather the defendants

submitted that the plaintiff, on the advice of his legal representatives, made a strategic decision not to raise the issue of bastardisation because:

(a) the Crown had indicated that, if bastardisation was raised, it would call evidence to rebut any claims of bastardisation; and

(b) the defence was concerned to present the plaintiff's case in a way which would not cause the Crown to rebut any aspect of it because it was thought that this strategy would achieve the best outcome for the plaintiff.

99. The defendants contended the evidence supported a finding that the Crown indicated at the committal hearing that a minimum term of imprisonment was not inappropriate and that Mr Richter QC intended to ask Mr Dickson QC for an undertaking that at the plea hearing he would reiterate what he said at the committal hearing. They contended that there was no evidence that the Crown undertook not to oppose a minimum term of imprisonment, that any such undertaking was conveyed to the plaintiff or that the Crown undertook not to oppose a minimum term of imprisonment in exchange for the plaintiff agreeing not to make much of the alleged bastardisation or that such an undertaking was conveyed to the plaintiff. In written submissions prior to the hearing the defendant submitted that the plaintiff's claim of a mistake "should be treated with considerable scepticism". In oral submissions senior counsel for the defendants submitted that the proposition that the decisions of the parole board amounted to a breach of an agreement or perceived agreement was "a very clever but spurious rationalisation" of the situation. To the extent to which there was some "agreement", it did not provide an explanation for the delay because it related to sentencing submissions and anything that occurred in 2012 could not have been a breach of the agreement.

Consideration

100. As pointed out above I have not accepted the factual basis for the plaintiff's submission. In the absence of there being either:

(a) a plea agreement which legally or morally inhibited him from raising issues of bastardisation in separate proceedings against the defendants, or

(b) an understanding that such an agreement existed,

there is no reasonable explanation for the delay. Instead, the delay should be characterised as a delay resulting from a deliberate decision by the plaintiff not to pursue those issues. There was no evidence, as there often is in workplace injury cases, of any ignorance on the plaintiff's part of the existence of limitation laws.

101. The existence of a deliberate decision on the part of the plaintiff not to pursue civil proceedings at that time was the subject of some very explicit evidence:

> So, is it your position that in that lead up to what you have referred to as the plea bargain you made a deliberate decision to forego the option of civil proceedings in return for the prosecuting authority not opposing the setting of a minimum sentence?---Yes, that's right. The negotiations were, at that stage, quite understandably limited to the charges, the criminal charges that I was fronting there. Once the plea agreement was entered into then there was no need to pursue civil avenues. I mean it would be nonsensical to conduct negotiations with respect to a criminal matter and at the conclusion of those negotiations to come to an agreement that we are not going to pursue the issue of bastardisation and then five minutes later seek to obtain advice in relation to the start of civil proceedings.

> All right. I just want to make the position clear. This was a deliberate decision on your part to forego those civil proceedings for what, at that time, was a beneficial outcome at the sentencing hearing?---Yes.

102. I have some concerns about this evidence because the plaintiff might have perceived it to be in his interests, in order to support his claim of there being a plea agreement, to suggest that he made a deliberate decision not to pursue civil remedies at that time. I consider it more likely that in the circumstances of Mr Knight at the time, having been sentenced to life imprisonment, he was less concerned with pursuit of civil remedies than with other matters and, as a consequence, paid little attention to his potential rights. However, had I accepted his evidence that a deliberate decision had been made to not pursue civil proceedings and to permit the limitation period to expire then that would have been a powerful consideration against an extension of time: *Itek Graphix Pty Ltd v Elliott* [2002] NSWCA 104; (2002) 54 NSWLR 207 at [88] to [98]; *Australian Croatian Cultural and Educational Association "Braca Radici" Blacktown Ltd v Benkovic* [1999] NSWCA 210 at [18].

103. I do not accept the plaintiff's submission that the granting of significant extensions of time in other cases is a matter relevant to the present application. I accept the defendants' submission that each case depends upon its own facts and the statutory framework in which it must be decided. Thus whether or not an extension of time should be granted in the present case turns on an assessment of the facts disclosed by the evidence in this case in the light of the requirements of s 36.

104. In summary, the position is that the length of the delay since that time in question is very significant (27 years from events to commencement) and the principal basis upon which the plaintiff contended there was an explanation for his delay has been rejected.

Section 36(3)(b) – the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant

Plaintiff's submissions

105. In relation to prejudice to the defendants the plaintiff submitted that any such prejudice was equally likely to affect the plaintiff. He submitted that every service and medical record relating to the plaintiff and to the injuries he sustained while in service was still in existence. These were said to include records of the Department of Defence, ACT Health, the Australian Federal Police, Victoria Police and Victoria Legal Aid. He also pointed to his contemporaneous notes describing his experience of bastardisation that were prepared for the purposes of providing instructions to his lawyers for the purposes of his sentencing in 1988. He submitted that in response to an FOI request the Department of Defence identified that a corporate file titled "Staff Cadet Julian Knight (3204059) - Hoddle Street Killings - DALS Aspects" was destroyed in 2001 by the Director of Army Legal Services. He also noted that the office of Public Prosecutions in Victoria has not disclosed documents relating to the plaintiff's plea and sentencing.

106. He submitted that all the key witnesses to the relevant events are still alive and able to be summonsed to give evidence. He contended that the available witnesses were able to give sufficient evidence for the defendants to adequately mount a defence to the allegations made against them. He submitted that the defendants had "cherry picked" which relevant witnesses they contacted with a view to obtaining statements and had failed to contact civilian witnesses living locally in the Canberra area.

107. So far as the strength of the plaintiff's case is concerned, he submitted that it was sufficient that the applicant's case was "not hopeless": *Ball v Commonwealth*, (unreported, Supreme Court of the Australian Capital Territory, Gallop J, 3 February 1997) at 7; *Taylor v Commonwealth* (unreported, Supreme Court of the Australian Capital Territory, Higgins J, 27 November 1997) at 7 to 9. He submitted that the statements of the alleged perpetrators and witnesses which were filed by the defendants for the purposes of the application showed that the material witnesses were available for examination and the defendants were in a position to defend the allegations made in the plaintiff's statement of claim.

Defendants' submissions

108. The defendants made detailed submissions in relation to the evidence that was identified as being available to the defendants in relation to each of the alleged incidents. I will address the detail of the evidence below.

Consideration

109. Where assaults are alleged, the issues will be, at least, whether the events occurred, whether any assault was a result of a person acting in self-defence and, assuming the assault is established, the nature of the assault and hence any damages arising from the assault.

110. Consideration of any prejudice to the defendants necessarily involves consideration of the extent to which records are available which provide evidence of the incidents and the extent to which witnesses can recall the incidents in question.

111. Clearly, in a case such as the present, having regard to the length of time since the incidents, the prejudice to be presumed as arising from the inevitable erosion of memory must be significant.

112. I will address each of the incidents alleged in the plaintiff's claim individually as the extent of actual prejudice varies depending upon the circumstances of each incident and the recollection of witnesses to those incidents.

113. The principal record of the plaintiff particularising the incidents is the statutory declaration which he submitted to the Defence Abuse Response Task force entitled "Personal Account" (**DART Personal Account**). This is a very detailed document of 95 pages plus annexures describing his time at Duntroon. It was clearly prepared with the benefit of the Army records of his period of service as well as his own recollections and impressions of particular incidents not referred to in those records. The document is impressive in its detail. It clearly reflects the plaintiff's experiences and perceptions so far as they could be recalled accurately at the distance of 26 years or reconstructed with the benefit of the documentary records which are available.

Incident 1. February 1987: leaps and jumps incident

114. This incident is described at page 14 of the DART Personal Account. The specific allegation is that during an exercise which is described as having been "taken in fun by all involved" Corporal William Yates, a first class cadet, grabbed the plaintiff as he ran past and punched him hard twice in the stomach.

115. The incident is not referred to in the Bastardisation Instructions.

116. The incident is not recorded in the plaintiff's personnel file, the medical file or psychology file maintained by the Department of Defence.

117. The evidence of Mr Yates' recollection was provided in a statement obtained by the solicitors for the defendants. He recalled that he was in a different platoon from the plaintiff. He referred to the activity as "splits". He could not recall participating in any splits exercise involving the plaintiff. His recollection was that splits was performed within a platoon as a result of which there would have been no reason for a cadet to go to a different floor of the company during splits. He therefore does not understand why he and the plaintiff would have been on the same floor during splits. He said "categorically" that he never punched or harmed the plaintiff while he was at Duntroon.

118. A lack of recollection as to participation in any splits exercises with the plaintiff on Mr Yates' part could be because such participation did not happen or because, although he once remembered such participation, he no longer does. The situation is therefore one of presumed prejudice because the evidence does not demonstrate any loss of recollection or documentation and it is not a case where any witness is alleged to have seen the incident.

Incident 2. 17 March 1987: "Bishing" incident

119. This incident is described at pages 21 to 23 of the plaintiff's DART Personal Account. The plaintiff described "bishing" as follows:

> Bishing was a traditional form of unofficial inter-company rivalry which originated in the "old" Duntroon. It originally took the form of practical jokes but it developed into inter-company water and flower/cocoa bomb fights, playful brawling and the taking of "hostages"…

120. On 17 March 1987, during the incident of bishing between the plaintiff's Kokoda Company and the Kapyong Company, the plaintiff describes the relevant part of the incident as follows:

> Most of the cadets involved in the skirmish were laughing as it was taken in fun by both sides. I ran around the outside of the building and tackled the Kapyong Company senior cadet using the firehose. I grabbed him in a bear hug from behind and pulled the cadet away from the doorway of the foyer. As I did someone behind me shouted angrily, "Fucking Fourthie!" and pushed me from behind into the nearby rose bushes. I let go of the Kapyong cadet with the firehose and fell backwards into the thorny bushes. I disentangled myself from the bushes and stepped back onto the concrete footpath. I was immediately set upon by five senior cadets from Kapyong Company. They repeatedly punched me about the head and body, mostly to the back of the head, and kicked and kneed me as they pushed and dragged me to the ground.

121. That continued until a Kokoda company cadet, John McQueen, told them to stop and started running at them. The plaintiff describes walking towards Company Sergeant Major Reed and asking him to press charges. The plaintiff was then taken to 5 Camp Hospital by cadet Peter Edwards. The plaintiff describes the treatment that he received and says that he was diagnosed with "severe ligament damage in the dorsum of the left wrist".

122. The plaintiff alleged that Roger Noble, now a Brigadier, was a witness to the events on 17 March 1987. He alleged that he was told by then Staff Cadet Noble "that the Kapyong company cadets involved in the incident have been 'spoken to' by the Kapyong company cadet Company Sergeant Major, Michael Fulham. He also alleged

that staff cadets in the company were berated by Mr Noble for not coming to Mr Knight's aid when he was attacked.

123. The incident is described in the Bastardisation Instructions on two occasions in similar terms to that in the DART Personal Account.

124. The incident is not recorded in the plaintiff's personnel file, the medical file or psychology file maintained by the Department of Defence, although the medical records do show injuries to the plaintiff's wrist consistent with what is alleged in the bishing incident.

125. The plaintiff's medical records from the 5 Camp Hospital show that he complained of a sore left wrist, had swelling and that the medical officer required x-rays to be taken. X-rays were taken, but no abnormality was detected and the left wrist was mobilised and bandaged. He was given light duties for two weeks. The next day he was reviewed by the medical officer and a ligamentous injury was diagnosed. He was given a back slab and told to elevate his wrist for two days. The back slab was removed on 24 March 1987. The medical officer referred to him being "still slightly tender". He was reviewed on 22 April and his hand was still tender.

126. The evidence contained in the affidavit of Michael Lysewycz dated 17 December 2014 was that Brigadier Noble has no relevant recollection of the bishing or any actions involving the plaintiff during the course of such bishing or of berating staff cadets of the Kokoda company for not aiding the plaintiff.

127. Mr Fulham could not recall meeting the plaintiff or having any dealings with him. He could remember bishing and intercompany rivalry associated with bishing. He could not recall the incident described by the plaintiff. He had no recollection of witnessing the bishing incident, although he could remember hearing that the plaintiff was injured during an instance of bishing. He was the senior cadet in Kapyong company and would have been responsible for speaking to cadets if bishing got out of hand. He does not recall ever doing so, but accepts that it is possible that he did.

128. The statement of Mr McQueen disclosed that he was a little older than the other third class cadets and had little interest in bishing. He could not recall any physical violence during bishing. He did not recall the incident described by the plaintiff.

129. Mr Reed identified in his statement that he could not recall the conversation alleged by the plaintiff to have occurred shortly after the assault ended. He could not recall any specific incident of bishing involving the plaintiff or the plaintiff suffering any injury as a result of bishing. Nothing in his oral evidence changed that position.

130. In relation to this incident I am satisfied that there is some actual prejudice as a result of the lack of recollection of those witnesses referred to by the plaintiff. Further, I am satisfied that there is prejudice to be presumed because the principal allegations are against unidentified members of the Kapyong Company and, at this distance, investigation of the plaintiff's allegations against those persons is likely to be significantly affected by the corrosive effects of time.

Incident 3. 15 May 1987: Hallway Incident

131. This incident is described at page 47 of the DART Personal Account. The plaintiff records that by mid-May 1987 he was "having regular clashes with the senior cadets in Kokoda Company". He was walking along a hallway in the barracks in order to get to

the shower when he came across “a group of about 10 first class cadets sitting on the floor on both sides of the corridor”. Some unfriendly things were said to him by a Corporal Thompson and Corporal Thorp. He received permission to pass from Sergeant Stephen Alexander and said “so I walked on to the showers despite efforts by senior cadets to trip me up as I passed”.

132. The incident is not recorded in the plaintiff’s personnel file, the medical file or psychology file maintained by the Department of Defence.

133. This incident is described in the Bastardisation Instructions in slightly different terms. The plaintiff describes that he was walking down the corridor “to see one of my third class friends” rather than to take a shower. He described his interaction with Corporal Thompson and that Sergeant Alexander said he could go through. He does not describe any attempt to trip him in that document.

134. Mr Alexander was contacted by the defendants’ solicitors and said he did not have a strong recollection of the incident but could remember some details. He did not recall the plaintiff being kicked or tripped.

135. Mr Thompson did not have any recollection of the first hallway incident. He said that it was plausible that it occurred because he recalled that the plaintiff was a poor cadet and the statements attributed to him by the plaintiff were consistent with his character. He could not remember ever seeing the plaintiff getting tripped in the hallway.

136. Mr Thorp had no recollection of that incident and that position did not change in cross-examination.

137. Craig Smith was not mentioned in the relevant section of the DART Personal Account. However, he was in Kokoda Company and his room was adjacent to the plaintiff’s in the Kokoda Company barracks. He had no recollection of the incident described by the plaintiff occurring in the hallway of the Kokoda Company barracks or of the plaintiff speaking to him and others outside the barracks following the incident described.

138. While there is some evidence from persons involved that an incident matching the plaintiff’s description did occur, the first defendant does suffer actual prejudice as a result of the lack of recollection of such an incident by those persons identified as having been involved. That prejudice could be classified as trivial, but only because of the trivial nature of the assault alleged.

Incident 4. Mid May 1987: Parade Rehearsal Incident

139. This incident is described at pages 47 and 48 of the plaintiff’s DART Personal Account. The plaintiff alleges that Staff Cadet Hamburger “constantly abused me throughout the rehearsal from not being able to march” and also “complemented the abuse by kicking my heels throughout the rehearsal”. The plaintiff alleges that Mr Hamburger did not like the plaintiff and told Sergeant Thompson that he should be given extra drill parades, which he was.

140. This incident is described in the Bastardisation Instructions, but the description there makes no reference to the kicking of the plaintiff’s heels throughout the rehearsal.

141. The incident is not recorded in the plaintiff’s personnel file, the medical file or psychology file maintained by the Department of Defence.

142. A statement provided to the defendants' solicitors by Mr Hamburger indicated that he had no recollection of the parade rehearsal incident nor did he recall ever kicking the plaintiff during a parade rehearsal or abusing him during such a rehearsal. He explained that because of his height it was unlikely that the plaintiff would have marched in front of him. He said there was no way he would have risked scuffing his boots by kicking the plaintiff on purpose because cadets wore spit polished boots to parade rehearsal and polishing them was a labourious task. He thought that if he had kicked the plaintiff by accident he probably would have yelled at him for failing to keep up and would have reported the incident to a sergeant who had the authority to order punishment such as Sergeant Thompson.

143. Mr Thompson provided a statement to the defendants' solicitors, prepared after reading the relevant part of the DART Personal Account, and said that he had no recollection of the parade rehearsal incident described in the document or the statement of claim. He does not recall the conversation the plaintiff describes as having occurred between Mr Hamburger and himself or recall ever ordering the plaintiff to attend extra drills.

144. I am satisfied that as a result of the lack of recollection on the part of Mr Thompson and Mr Hamburger, the first defendant would suffer actual prejudice. Because of the lack of recollection the first defendant will be less able to determine whether any contact that occurred amounted to an assault or whether it was an accidental interaction not amounting to an assault. Once again, this prejudice could be classified as trivial but only because of the trivial nature of the assault alleged.

Incident 5. 30 May 1987: bayonet incident; Incident 6. 30 May 1987: Hallway Incident; Incident 7. 30 May 1987: incident with Corporal Thompson; Incident 8. 30 May 1987: incident with Staff Cadet Everingham

145. These are a series of related incidents arising out of a parade rehearsal for the upcoming Queen's Birthday parade. They are described in the DART Personal Account at pages 57 to 62. Because of the nature of the incident, the bayonet incident is also recorded in contemporaneous documents.

146. The DART Personal Account describes that Lance Corporal Thorp abused the plaintiff over an incident the previous evening at the Private Bin nightclub where Staff Cadet Everingham had told him that he should not be wearing jeans and ordered him to return to college and change. The incident is described as follows:

> As Thorp ranted at me he had his unsheathed bayonet levelled a couple of inches from my chest. He furiously told me that I "must be a fucking idiot" for wearing jeans on local leave, and for not returning to the barracks when instructed to by Staff Cadet Everingham. When Thorp had finished abusing me he quickly jabbed me in the chest with his bayonet. I reacted instantly by angrily pushing Thorp's arm away and striding off to form up with the rest of Kokoda Company. I ignored Thorp's furious commands to return to where he was standing.

147. He was subsequently told by Lance Corporal Thorp that he was going to be charged with insubordination for walking off. Shortly afterwards he was confronted by Staff Cadet Hamburger who abused him for walking off on Lance Corporal Thorp. Staff Cadet Hamburger shouted at him in terms described in the statement and when the plaintiff turned to walk away from him he "grabbed me by the front of my shirt with both hands, then quickly pushed me backwards up against the wall and held me there". Witnesses to this incident are identified as Sergeant Gary Stone and Corporal Peter Crane. Mr Hamburger is then alleged to have continued holding him up against the

wall and threatening to punch him in the head. Because the plaintiff thought he was going to be attacked, he knocked Mr Hamburger's arms away and pushed him backwards. At that point Staff Cadet Michael Dunkley intervened as did Corporal Thompson. Mr Knight describes the response of Company Sergeant Major Reed who indicated that charges would not be pursued, but that the plaintiff would be confined to barracks for the weekend.

148. Each of incidents 5, 6, 7 and 8 are described at two points in the Bastardisation Instructions.

149. Mr Thorp provided a statement to the defendants' solicitors indicating that he had no memory of that incident at all and that he did not recall ever stabbing or jabbing the plaintiff or anyone else with a bayonet whilst at the Royal Military College. . He maintained that position in cross-examination. Major Vercoe's report (see [157] below) and Mr Hamburger's statement did not refresh his recollection.

150. Mr Hamburger had a strong recollection of witnessing this incident between the plaintiff and Mr Thorp. That is because it was the catalyst for what he later said to the plaintiff. He described seeing Mr Thorp "tearing into Knight" and tapping him on the shoulder with the flat side of the bayonet. He heard the plaintiff swear at Mr Thorp and storm off towards the barracks. He was offended by the plaintiff's behaviour and went and found him and told him what he thought. He says that he did not touch the plaintiff in any way "but did get in his face and… probably swore". This was the only time he remembered speaking to the plaintiff. He did not witness the subsequent events.

151. Mr Gary Stone was contacted by the defendants' solicitors in March 2015 and told them in April 2015 that he recalled an incident corresponding to incidents 6, 7 and 8, but could not recall who else was present in the corridor, any of the words spoken by the plaintiff, seeing anyone touch the plaintiff or touching anyone during the incident. He could recall sending people back to their rooms which he had authority to do as Platoon Sergeant.

152. Mr Peter Crane was contacted by the defendants' solicitors and did have some recollection of incidents 6, 7 and 8. He recalled someone yelling at the plaintiff and that the incident lasted for about 60 seconds before Mr Thompson came down the hallway and told the plaintiff that he was in trouble at which point Sergeant Stone arrived.

153. Mr Stewart Crome was contacted by the defendants' solicitors and said he had no recollection of the hallway incident of 30 May 1987 or of the plaintiff speaking to him and others after the incident.

154. Mr Michael Dunkley was contacted by the defendants' solicitors. He remembered the plaintiff and Mr Hamburger, but had no recollection of the hallway incident described by the plaintiff. He could not recall stepping in between anyone and holding them apart or ever seeing anyone assault the plaintiff. He did remember that the plaintiff was constantly in trouble, would not respect authority and "wasn't cut out to be an officer". He described yelling at junior cadets as attributed to Mr Hamburger as being consistent with the way in which senior cadets spoke to junior cadets.

155. Mr Everingham did have a recollection of the bayonet incident. He recalled Mr Thorp speaking to the plaintiff about his standard of dress at the rehearsal. He did not recall seeing Mr Thorp jab at the plaintiff with his bayonet. He had no recollection of the hallway incident or any recollection of ever shouting at the plaintiff.

156. Mr Thompson had some recollection of the hallway incident described by the plaintiff. He could recall an exchange between Mr Hamburger and the plaintiff outside the Kokoda Company barracks. He could recall that they had raised their voices but not what was said. He remembered ordering the plaintiff to his room. While he recalled that there were witnesses, he could not recall who they were. He could not recall the detail of what he said to the plaintiff.

157. These incidents are described in the report of Major Vercoe, the Officer Commanding of Kokoda Company entitled "Report on the CSC management and performance of SCDT J Knight" (JK 7) prepared after the plaintiff stabbed Mr Reed. The existence of this contemporaneous record is significant in that it demonstrates that insofar as other witnesses could not recall these incidents or could not recall the details disclosed in Major Vercoe's report that lack of recollection would amount to actual prejudice in so far as it addressed a fact in issue. That is particularly so in relation to the absence of recollection on Mr Thorp's part of the bayonet incident and, in particular, precisely what occurred with the bayonet and what, if any, physical contact occurred between the plaintiff and Mr Hamburger.

Incident 9. 30 May 1987: the first Private Bin incident; Incident 10. 31 May 1987: second Private Bin incident.

158. These incidents are described at pages 63 to 74 of the DART Personal Account. The narrative is very detailed. A large number of individuals are identified as witnesses to some or all of the incidents described. Company Sergeant Major Reed and Lance Corporal Thorp are identified as having been present "among a large group of Duntroon senior cadets". The first incident described occurred after Mr Reed is alleged to have told the plaintiff to return to barracks on multiple occasions. Mr Reed is described as having been drunk. It is alleged that at one point he began "pushing [the plaintiff] backwards and yelling "you disobeyed me and I fucking hate that!".

159. The second incident involves Mr Thorp hitting the plaintiff in the face, both the plaintiff and Mr Thorp hitting each other in the face and then the plaintiff being hit in the face by someone who he did not see. The last blow broke the plaintiff's nose. The plaintiff and an unidentified cadet were ejected from the club by bouncers. The plaintiff then describes what happened from that point until the plaintiff stabbed Mr Reed.

160. The incident is not described in the Bastardisation Instructions. However, it is described in the record of the plaintiff's interview with police following the stabbing of Mr Reed as well as in the report of Mr Watson-Munro dated 29 February 1988 and the report of Dr Byrne dated 26 October 1988.

161. Mr Thorp recalled that he walked up and spoke to the plaintiff telling him, possibly in colourful language, that he was a fool for coming to the Private Bin when a lot of senior cadets were there and knew he was on stoppage of leave. He recalled that when the plaintiff later returned with some friends to the Private Bin, close to midnight, another cadet told the plaintiff to leave. A minor scuffle broke out between the plaintiff's friends and Mr Thorp. The bouncers told the plaintiff and his friends to leave. He could not recall the incident involving any punches or resulting in anyone bleeding. He could only recall pushing and shoving. It was only the next day that he found out that Mr Reed had been stabbed subsequently. In cross-examination he said that he did not recall the scuffle "being as dramatic as was mentioned in your statement, that's for sure".

162. Mr Reed provided a statement to the defendants' solicitors indicating that he had some recollection of the incident at the Private Bin. He could recall approaching the plaintiff and telling him to go back to Duntroon. He could not recall if he touched the plaintiff in any manner when he spoke to him. He could recall another person that he did not know intervening and telling Mr Reed that he could not tell the plaintiff to leave. He said he then had a scuffle but it was over very quickly as the bouncers intervened. He did not think any punches were thrown. He said that he did not touch the plaintiff during this scuffle. In cross-examination he said he could not recall grabbing the plaintiff by the jumper when he told him to go back to college. He denied punching the plaintiff at any time.

163. He recalled being struck and being knocked down as a result of what was subsequently known to be the actions of the plaintiff. He annexed to his statement the statement that he gave to the Australian Federal Police which is more specific in some matters of detail, but otherwise consistent with his recollection.

164. The defendants' solicitors obtained a statement from Mr Sean Rapley, a cadet in Alamein Company, who arrived with the plaintiff at the Private Bin. Mr Reed spoke to him and told him that the plaintiff should leave.

165. Craig Smith, who is referred to in the DART Personal Account as having been with Simon Macks and seeing the plaintiff with his pocket knife after the second Private Bin incident, provided a statement to the defendants' solicitors indicating that he did not remember being at the Private Bin when the stabbing happened. He could not remember being with Mr Macks outside the Private Bin and seeing the plaintiff with a knife. His recollection was that he only found out the next morning that Mr Reed had been stabbed.

166. The material produced by the Australian Federal Police in response to a notice for non-party production issued by the defendants includes detailed documentary material relating to the circumstances surrounding the incident involving the stabbing of Mr Reed. That is because it led to the plaintiff being charged with malicious wounding. The documents include statements from persons who witnessed the stabbing and the events leading up to it. They include a summary of events from the first constable who investigated the matter, a list of witness statements of Mr Reed, Alice Meghan Rummery, who had witnessed the incidents particularised by the plaintiff, and Robert Simspon, a civilian witness to the incidents particularised by the plaintiff. The documents also include a typewritten transcript of a handwritten record of interview between Constable Austen and the plaintiff, which took place at the Royal Canberra Hospital on 31 May 1987. It is apparent that the plaintiff's description of the events in his DART Personal Account is drawn from this record which describes in detail his versions of his interactions with Mr Reed which form the basis of the particularised assaults.

167. There are documentary records from the Royal Canberra Hospital relating to the plaintiff's treatment for his cut hand following the stabbing of Mr Reed as well as his broken nose.

168. There is also a report prepared by Major Vercoe in relation to the stabbing of Mr Reed which includes a description of the lead up to that incident including what appear to be the two incidents as particularised by the plaintiff (JK 6).

169. In relation to this incident there are good documentary records and there are likely to be witnesses who recall the events in question. It is unlikely that there would be a large amount of dispute about the basic facts although the details would remain in dispute, particularly as to who punched the plaintiff and how his nose was broken. Assessing the extent of actual prejudice is made more difficult by the fact that the principle protagonists were all intoxicated at the time and it is therefore difficult to disentangle sources of prejudice. It is at least a case of significant presumed prejudice.

170. In relation to the causes of action alleged against Mr Reed, those causes of action must be considered in the context of the undoubted cause of action that would exist (even if statute barred) in Mr Reed against the plaintiff which would significantly outweigh any damages to which the plaintiff was entitled. The existence of the harm to Mr Reed admitted by the plaintiff is a factor to consider in determining whether an extension of time is appropriate in relation to the claim against Mr Reed.

Claim against the Commonwealth

171. In addition to the individual incidents it is necessary to consider the plaintiff's allegation that cumulatively these incidents forced him to resign from the Army. The plaintiff has particularised the claim that he was "forced" to resign in the following manner:

> My submission will be that whilst accepting that my performance as a staff cadet was poor, the constant "bastardization" by senior staff cadets and that ended with my stabbing of the 3rd defendant in the Private Bin nightclub on 31 May 1987 was the deciding factor in the decision of the [Director of Military Arts'] Board of Studies that I be asked to 'Show Cause'.…
>
> In the alternative, my submission will be the constant "bastardization" of the plaintiff by senior staff cadets adversely affected the plaintiff's performance to the point where he was assessed as being below the standards required of a staff cadet.

172. This claim is a more substantial one in terms of potential damages because the allegation is that this was the cause of him failing to become an officer in the Australian Army and that the first defendant is responsible for the loss. Clearly it raises a number of difficult questions of causation which have become substantially more difficult as a result of the effluxion of time. Without articulating all of the difficult questions, it would be necessary to consider whether the conduct experienced by the plaintiff was experienced because of a breach of duty on the part of the Commonwealth or simply because he was disliked, as some of the statements of witnesses suggest, because he was a poor cadet who had difficulty getting on with others. More significantly it will involve considering the counterfactual situation that whatever conduct amounted to a breach of duty by the first defendant did not exist and considering whether the plaintiff's behavioural performance would have been different enough so as to avoid the stabbing and otherwise successful completion of the course.

173. There are numerous documents available relating to the progress of the plaintiff during his time at Duntroon in addition to those records relating to the individual incidents. The progress of the plaintiff was summarised in Major Vercoe's report (see [157] above) which includes his disciplinary history and an assessment of his performance and incidents which could be described as "harassment", namely the bishing incident (incident 2) and the bayonet and related incidents (incidents 5-8).

174. However, there are factual conflicts as to the circumstances surrounding the plaintiff's decision to resign from the Army. Following the stabbing incident involving Mr Reed, there were a number of interviews with Colonel Rodney Earle, the Director of Military

Art at the College, concerning the plaintiff's future in the Army. Records of which were made by other officers. What was said at these meetings would be significant in determining the causation in the plaintiff's claim against the Commonwealth.

175. An example of the factual issues that would arise is that the plaintiff alleges that the minutes of the meeting with Colonel Earl, on 12 June 1987, which were prepared by Mr Graeme Moffatt, were incomplete and that there was substantial additional conversation not recorded in the document. The defendants' solicitors contacted Mr Moffatt. He recalled that the plaintiff had been called-up a number of times, but he could not recall what he had actually transcribed or the actual dates. His notes were not word for word but rather in dot point. He told the defendants' solicitors that, while he could not recall any specifics of the meetings, he always made a note of all pertinent points and would not have omitted anything. . He had no recollection of Mr Earl ever directing him not to make a record of certain parts of the meeting. The defendants' solicitors are likely to have identified a Rodney Earl who had served in the army, but he was reluctant to speak to the solicitor who contacted him and explained he was hard of hearing. No response was received by the defendants' solicitors to a letter sent to him in April 2014.

176. I am satisfied that, notwithstanding the existence of significant numbers of documentary records relating to the plaintiff, because of the nature of the causation question and the issues that it raises, the effluxion of time will mean that it should be presumed that the Commonwealth will suffer significant prejudice in defending the allegation in addition to the prejudice that arises in relation to the individual incidents alleged.

Section 36(3)(c) – the conduct of the defendant after the cause of action accrued to the plaintiff, including the extent (if any) to which the defendant took steps to make available to the plaintiff means of ascertaining facts that were or might be relevant to the cause of action of the plaintiff against the defendant

Plaintiff's submissions

177. The plaintiff submitted that the Commonwealth instigated an offer extended to the plaintiff by the Victorian Office of Public Prosecutions in 1988 that the Crown would undertake not to oppose the setting of a minimum non-parole term provided that the plaintiff undertook not to raise allegations of bastardisation at Duntroon during his plea hearing.

178. He also submitted that first defendant did not provide all the plaintiff's service records to the plaintiff's legal advisers in 1988 including the reports of investigations into the events leading up to the plaintiff's stabbing of Mr Reed on 31 May 1987.

Defendants' submissions

179. The defendants made no submissions specifically directed to this consideration.

Conclusion

180. I have not accepted the plaintiff's submission that the Commonwealth was involved in any plea agreement or arrangement: see [50] and [88](e) above.

181. In the light of this, the actions of the defendants in making available to the plaintiff means of ascertaining the facts relevant to his causes of action is not a consideration of any significance in the present case. The plaintiff was at all times since no later than his discharge from the Army aware of the facts relevant to his causes of action. It is not clear on the evidence which documents the plaintiff says were not provided to him in relation to the stabbing of Mr Reed. However, no causal connection has been established between any such failure and the failure on the part of the plaintiff to bring proceedings against the defendants within the limitation period.

Section 36(3)(d) – the duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action

Plaintiff's submissions

182. The plaintiff identified that he was in custody within two and a half months of the last cause of action arising and that within 16 months of the last cause of action arising he had given "a formal undertaking to the Crown not to raise allegations of bastardisation in open court."

Defendants' submissions

183. The defendant submitted that the plaintiff has not been under any legal or physical disability since the incident in question.

Conclusion

184. Paragraph (d) of sub-section 36(3) refers to "the duration of any disability of the plaintiff arising on or after the date of accrual of the cause of action." The meaning of "disability" in this provision of the Act has, over the years, been the subject of differing judicial opinion: see *Doyle v Gillespie* [2010] ACTSC 21 at [81] – [84]; Dal Pont, *Law of Limitation* (LexisNexis Butterworths, 2016) at [20.34] – [20.36]. In *Stefek* at [52] I identified that there is authority consistent with reference to "disability" in s 36(3)(b) meaning legal disability as well as authority consistent with reference to disability meaning physical disability. In that case I expressed a tentative view that disability is a reference to "legal disability".

185. The Dictionary in the Act defines the phrase "under a disability" as follows:

> **under a disability**—*a person is* **under a disability**—
>
> (a) while the person is under 18 years old; or
>
> (b) while the person is, for a continuous period of 28 days or longer, incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of action in relation to the limitation period for which the question of disability arises because of—
>
> (i) intellectual retardation or disability, mental illness or disorder, brain damage, senility or physical disability; or
>
> (ii) war or warlike operations; or
>
> (iii) circumstances arising out of war or warlike operations.

186. The Act does not separately define "disability" as a term on its own. Nor does the *Legislation Act 2001* (ACT) contain any definition.

187. The meaning of "disability" for the purposes of s 36(3)(d) has already been traversed at some length in Refshauge J's decision in *Doyle v Gillespie*. In considering whether "disability" as used in paragraph (d) should be taken to mean physical disability or legal disability his Honour reviewed previous decisions of this Court and compared the provision to those in other States and Territories. At [89] to [90], he said:

> It seems to me that there are some arguments both ways, though it seems odd that the paragraph refers only to "duration" of a disability if it meant physical disability since the nature or seriousness of a disability would seem to be more relevant than duration, or, at least, needing to be considered in combination with duration.
>
> I am, therefore, inclined to accept the original view of Miles CJ that disability in s 36(3)(d) of the *Limitation Act* means legal disability. I have, however, not heard full argument and so cannot come to a definitive finding.

188. Section 141 of the *Legislation Act 2001* (ACT) provides that "in working out the meaning of an Act, material not forming part of the Act may be considered." Sub-section 36(3) formed part of the *Limitation Ordinance 1985* (ACT) when it was originally notified on 19 December 1985. The explanatory statement for the Ordinance makes no particular reference to paragraph (d) or its use of the term "disability". However, at the time of the Ordinance's drafting, the Commonwealth Attorney-General's Department prepared a working paper for "the purpose of developing proposals for a Limitations Ordinance for the Australian Capital Territory": Attorney-General's Department, *Proposals for the Reform and Modernization of the Laws of Limitation in the Australian Capital Territory, Working Paper* (Canberra, April 1984) (**the Working Paper**). At paragraphs [41] to [51] the Working Paper discusses the legislative reforms which were occurring at that time in Australia, most notably in Victoria, with respect to extension of limitation periods for personal injury claims. In discussing courts' power to extend the period, the Working Paper notes perceived flaws with provisions in force in other jurisdictions giving courts a power to extend time and compares the legislative reforms which were then underway in England to those taking place in Victoria. Relevantly, at [51] the paper recommended that s 23A of the *Limitation of Actions Act 1958* (Vic) (**Victorian Act**) be adopted in the Territory.

189. Section 23A came to be part of the Victorian Act when the *Limitation of Actions (Personal Injury Claims) Act 1983* (Vic) (**LAPI Act**) was enacted. It replaced an earlier provision (also s 23A) which gave the courts a discretion to grant an extension of time, but which did not contain a list of factors to be considered by the Court in deciding whether or not to exercise the discretion. At the time of the Attorney-General's report, and the enactment of the *Legislation Act 1985* (ACT), s 23A provided:

> 23A (1) This section applies to any action for damages for negligence nuisance or beach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) where the damages claimed consist of or include damages in respect of personal injuries to any person.
>
> (2) Where an application is made to a court by a person claiming to have a cause of action to which the section applies, the court, subject to sub-section (3) and after hearing such of the persons likely to be affected by that application as it see fit, may, if it decide that it is just and reasonable so to do, order that the period within which an action on the cause of action may be brought be extended for such period as it determines.
>
> (3) In exercising the powers conferred on it by sub-section (2) a court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:
>
> (a) the length of and reasons for the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;

(c) the extent, if any, to which the defendant had taken steps to make available to the plaintiff means of ascertaining facts which were or might be relevant to the cause of action of the plaintiff against the defendant;

(d) the duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) The powers conferred on a court by sub-section (2) may be exercised at any time notwithstanding –

(a) that more than six years has expired since the cause of action accrued; or

(b) that an action in respect of such personal injuries has been commenced.

(5) An application under this section shall be made by summons in the jurisdiction in which an action has been or is proposed to be brought and a copy of that summons shall be served on each person against whom the claimant claims to have the cause of action, provided that a judge of the Supreme Court may give leave to bring an action in any court which seems to him appropriate.

190. As is made clear from the terms of the provisions, s 36(3)(d) is identical to s 23A(3)(d) of the Victorian Act. The drafter of the *Limitation Act* appears to have followed the recommendation made by the Attorney-General's Department as s 36 is almost word for word the same as s 23A.

191. Like the *Limitation Act*, neither the Victorian Act nor the LAPI Act provides a definition of the meaning of "disability". Similarly, as is the case with the Legislation Act in the Territory, the *Interpretation of Legislation Act 1984* (Vic) does not contain a definition of "disability". The second reading speech for the *Limitation of Actions (Personal Injury Claims) Bill*, however, sheds some light on the origins of the considerations set out in s 23A(3). The Bill was read for a second time before the Victorian Legislative Council on 4 May 1983. The then Minister for Industrial Affairs, in moving the second reading, said:

...

The Chief Justice's Law Reform Committee has reviewed the issue of limitation of actions for personal injuries in Victoria. ... The committee's recommendations are set out in a report adopted on 25 June 1981 and a supplementary report adopted on 22 April 1982.

...

The Government is indebted to the Chief Justice's Law Reform Committee for its reports. The Government has drawn heavily on those reports in the framing of the scheme introduced by this Bill while not adopting all their recommendations.

...

In all personal injury claims, if the injured person fails to bring the action within the relevant six-year period he can apply to a court for an extension of time in which to bring his action. The court will decide in all the circumstances of the case whether it is just and reasonable to grant the extension. While not limiting the court's discretion, guidelines are provided to assist the court in the exercise of its discretion.

...

192. The Chief Justice's Law Reform Committee *Report on Limitation of Actions in Personal Injury Cases* (25 June 1981) had criticised the provision giving rise to the discretion which was then in force as being difficult to construe and for resulting in "technical procedural difficulties in the way of proper exercise of a discretion" (p 8). In its place the Committee recommended a new provision be inserted into the Victorian Act, which included as one of "the circumstances of the case" that judges have regard to "the duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action." In explaining the recommended sub-paragraph, the Committee said:

> The guidelines in (e) [what became s 24A(3)] have been based on those recommended by the Orr Committee (Law Reform Committee, Twentieth Report – Interim Report on Limitation of Actions in Personal Injury Claims Cmnd. 5630 (1974), para. 69). They set out for the assistance of applicants, their legal advisers and the Court exercising discretion the factors thought most likely to be relevant to exercise of the discretion. However, it was not designed to limit the general discretion under sub-paragraph (c) [the paragraph giving rise to the discretion] or to spell out necessary conditions to the exercise of discretion ...

193. The Orr Report referred to in the Committee's report is the 20th Report of the Law Reform Committee, chaired by Lord Justice Orr and presented to the United Kingdom Parliament by the Lord High Chancellor in May 1974: *Interim Report on Limitation of Actions – In Personal Injury Claims*. At [69] of that report, the Law Reform Committee recommended that the courts be given a discretion to extend limitation periods for personal injury claims and proposed that as part of a provision doing so the following be included:

> ...
>
> (5) It shall be the duty of the court, in deciding whether to exercise its discretion under paragraph (2)(b), to have regard to all the circumstances of the case and in particular to –
>
> ...
>
> *(d)* the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action[38] ;
>
> ...

194. Footnote 38 provides "See para. 95, below." Paragraph 95 appears in Part VI of the report entitled "Disabilities". The relevant paragraphs of that part are as follows:

> **Part VI**
>
> **DISABILITIES**
>
> 89. Under section 22 of the Limitation Act 1939, time does not (subject to an important exception to which we refer below) run against a plaintiff if he was under a disability at the time of accrual of his cause of action, until he ceases to be under a disability. *For this purpose, "disability" means minority or mental illness.*
>
> 90. The effect of disability on limitation raises a number of issues, not all of which are particularly relevant to personal injury claims. For example, it is arguable whether the concept of disability should be extended to cover some forms of purely physical illness. We propose to deal in our final report with this and other aspects of disability which affect limitation generally. There are, however, two features of the existing law which are peculiarly significant in personal injury claims and which we have, therefore, thought appropriate to discuss in this interim report.
>
> **Supervening disability**
>
> ...

> 92. As the law stands, it is clear that supervening mental illness has no effect on the running of time. [A footnote referred to *Garner v Wingrove* [1905] 2 Ch 233 and *Kirby v Leather* [1965] 2 Q.B. 367 and the *Prescription and Limitation (Scotland) Act 1973*, s 17(2).] This rule is of special significance in personal injury claims because the accident giving rise to the cause of action may itself cause the disability and there is undoubtedly an argument for giving effect to disability in such a situation: there is something objectionable in a rule which prevents time running against the person who is knocked down by a motor vehicle and thereby immediately rendered mentally ill, but which lets time run against him if the accident merely causes 24 hours' unconsciousness followed by mental illness. Yet that is, on the authorities, the effect of the current law, since the question whether time has started running against the plaintiff appears to depend on the rather artificial distinction drawn between disability supervening in the course of the same calendar day as that on which the accident occurred and disability supervening after the end of that day.
>
> ...
>
> 95. Our conclusion on this subject is that to give effect to supervening disability (whether generally or only where the disability is caused by the injury giving rise to the cause of action) would, in personal injury claims, raise a number of difficulties and that it would be right to make this change in the law only if there were no better way of avoiding possible hardship. In practice, we think that our proposal to confer on the court a residuary discretion does constitute a better way: it would enable the court to avoid making the anomalous distinctions referred to in paragraph 92 above and would also make it possible for justice to be done where it could not be shown, by medical evidence, precisely when the disability arose.
>
> ...

195. The Law Reform Committee further considered the meaning of "disability" in its final report: Law Reform Committee, British Parliament, *Final report on limitations of actions*, Report No 21 (1977). In discussing the scope of the term "disability", it said:

> **Disabilities**
>
> ...
>
> 2.41 ... Since the enactment of the Limitation Act 1939, the only forms of disability are minority and mental illness. The criticism that has been made is that there are other forms of illness which effectively prevent a potential plaintiff from exercising his legal rights and that a person suffering from one or other of these forms of illness ought to be treated as being under a disability. We appreciate the force of this argument; however, it would in our view be difficult to draw an effective and precise line between those forms of physical illness which could properly be treated as creating disabilities and those which could not. Moreover, such hardship as may be caused to potential plaintiffs is seldom likely to arise in practice outside the field of personal injury claims where an accident may produce in the plaintiff a state of incapacity, not amounting to mental illness, which makes it difficult for him to take legal advice and exercise his rights. The implementation by the Limitation Act 1975 of our recommendation that in personal injury claims the court should have a discretion to extend the time in order to meet hard cases will, in our view, meet this particular criticism. .

196. The Law Reform Committee's proposal was ultimately accepted by the United Kingdom Parliament and introduced as s 33 of the *Limitation Act 1980* (UK).

197. The terms of these reports demonstrate that the provision allowing a court to grant an extension of time which they recommended was designed to permit regard to be had to any *supervening* legal disability of the plaintiff, that is, disability arising after the accrual of the cause of action. That was necessary because the state of the law in the United Kingdom at the time was such that supervening mental illness had no effect on the running of time. Thus the genesis of the Victorian provision and of s 36(3)(d) clearly indicates that the reference to disability is to legal rather than physical disability.

198. However, consistently with the recommendations of the Working Paper (at [173], [177]) the provisions of the *Limitation Act* relating to the running of limitation periods for persons under a disability were modelled on the New South Wales provision which was not limited in a way that excluded supervening disability but rather applied where there was a disability at any time during the running of the limitation period. Because of this there was in the *Limitation Act* no real need to separately accommodate the issue of disability in the extension of time provision. However, the adoption of the provisions of different jurisdictions as models for the various provisions in the Act has resulted in a law which incorporates this minor discrepancy.

199. The result is that while, having regard to its antecedents, the word "disability" is a reference to legal disability, because of the other provisions of that Act it is unlikely to be a consideration that is of significance in extension of time applications because the running of the limitation period would have been suspended in any event during the period of disability.

200. In any event I accept the defendants' submission that the plaintiff has not been under any legal or physical disability since the date of the incidents relied upon. Imprisonment is not a disability in the relevant sense. The fact that the plaintiff was incarcerated could be an explanation for his failure to commence proceedings, but it is not a matter which was put forward in his evidence as providing an explanation. Rather, the explanation in his evidence was based upon his understanding of the terms of the plea agreement, evidence which I have rejected. The fact that he was in custody has certainly not been a barrier to him commencing litigation that he wished to pursue: see [227]. As a consequence, even if I am wrong in the conclusion expressed above that the reference to disability in s 36(3)(d) is a reference to a legal disability, it is not a factor of any significance in the present case.

Section 36(3)(e) – the extent to which the plaintiff acted promptly and reasonably once he or she knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages

Plaintiff's submissions

201. The plaintiff submitted that he was only 18 and 19 years old at the time of the relevant events and that he was in custody within two and a half months of the last cause of action arising and only 16 days after being discharged from the army. He pointed to the fact that within three weeks of being notified on December 2013 that he would not be granted parole on the expiry of his minimum non-parole term he took steps in January 2014 to commence the present proceedings.

Defendants' submissions

202. The defendants submitted that December 2013 is not the time at which the question as to whether the plaintiff acted promptly and reasonably falls to be considered. Rather they contended that the extent to which the plaintiff acted promptly and reasonably needs to be considered by reference to the whole of the period since the events in question.

Conclusion

203. Having regard to my conclusions about the nature of any agreement or understanding for the purposes of the plaintiff's sentencing hearing, I consider that the whole of the period since the events in question must be taken into consideration. That means I reject the plaintiff's submission that the relevant period is only that period from when the plaintiff was notified that he would not be granted parole on the expiry of his minimum term.

204. My conclusion as to the reasonableness of the plaintiff's conduct is expressed above (at [100]-[104]) in relation to his explanation for the delay.

Section 36(3)(f) – the steps (if any) taken by the plaintiff to obtain medical, legal or other expert advice and the nature of the advice the plaintiff may have received.

205. The plaintiff identified that he received medical assistance immediately after the "bishing" incident. He also referred to the advice that he received via his then legal advisers to accept the offer extended by the Crown to not oppose the setting of a minimum non-parole period provided the plaintiff did not allege that "bastardisation" had occurred at Duntroon during his plea hearing.

Defendants' submissions

206. The defendants submitted that there is no evidence that the plaintiff sought to obtain legal, medical or other expert advice at any time since the dates of the alleged incidents in 1987.

Conclusion

207. I accept the defendants' submission that the timing of the plaintiff obtaining medical, legal or other expert advice and the nature of that advice is not a significant matter in the present case. It is not a case where the plaintiff was deterred from bringing proceedings because of the advice that he received or where the timing of the receipt of that advice provides some explanation for why the proceedings are only brought now.

Other matters

208. Although the statutorily mandated considerations in s 36(3) cover many of the issues that need to be considered on the present application, they are not exhaustive and in the present case there are other matters raised by the submissions which need to be separately addressed.

Broader significance in relation to abuse in the armed services

209. The plaintiff submitted that the determination of the present application has consequences not only for the present plaintiff but also for other potential plaintiffs in relation to historical abuse suffered in the Australian Defence Force: see *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344 at 349. He submitted that the welfare of society militates in favour of granting an extension of time in which to file the application. He submitted that the Defence Abuse Response Task Force has uncovered widespread reported and unreported abuse within the Australian Defence Force including the Royal Military College, Duntroon.

210. In support of that contention he referred to their publicly available Second Interim Report to the Attorney-General and Minister for Defence dated June 2013 and the Third Interim Report to the Attorney-General and Minister for Defence dated September 2013. Based on those two reports, which were not in evidence, he made various submissions about the extent of abuse within the Army and submitted that:

> To deny the plaintiff an extension of time within which to file an application would not do justice in the instant case, and would also establish a precedent to be relied upon by the respondent in defeating similar applications by other complainants of historical abuse at Duntroon, ADFA and other ADF training establishments.

211. I accept that it is publicly notorious that there are very significant issues relating to the abuse of members of the defence forces that are long-standing, have been inadequately addressed in the past and that are presently of significant public concern. I do not accept the submission that to deny an extension of time in the present case would establish a precedent to be relied upon by the Commonwealth in defeating similar applications by other complainants of historical abuse at Australian Defence Force training establishments. As I accepted above, applications for extensions of time are very fact sensitive and must be determined within the scope of the relevant statutory framework that permits such an extension.

Investigation by ACT policing

212. The plaintiff drew attention to the fact that as at the date of the hearing the bishing incident and the assaults at the Private Bin nightclub were both the subject of current criminal investigations by ACT policing.

213. I do not consider this to be a matter of significance in relation to the application. The fact that, for some offences, criminal proceedings may be able to be brought at any time reflects a legislative judgment about what limitation periods are appropriate. The present civil claim must be dealt with according to the statutory provisions which govern it.

Extent of injury and damage

214. The defendants submitted that except in relation to the bishing incident and the second Private Bin incident there is no evidence that the plaintiff suffered anything beyond momentary, trivial injury, if he suffered any injury at all. The defendants also submitted that the lack of proportion between, on the one hand, the cost, stress and personal inconvenience caused to those who would be caught up in this litigation as parties or witnesses and, on the other, the outcome should the plaintiff succeeded in a substantive claim, is an important additional factor to be taken into account in determining whether it is just and reasonable for time to be extended.

215. Incidents 3, 4, 5, 7 and 8 involve matters which if established would only amount to technical assaults. Incident 1 is alleged to have involved two punches to the stomach with no other consequences. Incidents 6 and 9 involved the plaintiff being grabbed and pushed with no other consequences. The consequences of incident 2 (the bishing incident) are described at [124] to [125] and have had no ongoing consequences. Incident 10 (the second Private Bin incident) involved the plaintiff being punched and receiving a broken nose. No ongoing consequences were identified. Overall the incidents can be characterised as mostly trivial with incident 10 involving a significant assault, but with each causing no long-term physical or mental harm. If an extension of time was granted there would be a very significant disproportion between the cost and

effort involved in litigating the issues at this distance and the likely damages that could be recovered if the claims were successful.

216. The economic loss claim against the first defendant falls into a different category. The potential award of damages for that claim would be significantly greater. However, that claim would face very significant obstacles having regard to the plaintiff's involvement in the Hoddle Street Massacre. The fundamental difficulty for that aspect of the claim is that there is no allegation that he suffered some form of mental harm which would link in a causal sense the assaults or negligence alleged in the statement of claim to the commission of the Hoddle Street Massacre. He was sentenced on the basis that he was responsible for his actions. Unless the plaintiff could establish that his commission of the Hoddle Street Massacre was caused or materially contributed to by the negligence of the Commonwealth then his criminal acts at that time would sever any causal link between his discharge from the army and subsequent loss. The plaintiff's submission was that had he not been discharged from the Royal Military College then "on Sunday night August 1987 I would have been in my room in the barracks at Duntroon ironing my uniform and studying for the next day's training and not in Melbourne on the street on Hoddle Street". It is difficult to see how, in the absence of some mental illness, the carrying out the massacre by the plaintiff would not be considered to be a novus actus interveniens breaking the chain of causation of any damage arising from the plaintiff being "forced" to leave the army.

Absence of other remedies

217. The plaintiff pointed to the fact that if an extension of time was not granted then, as a result of the plaintiff's exclusion from the class of persons who could make a claim under the Defence Abuse Response Scheme, he was left without any other means of redress.

218. I accept this submission and take that fact into account. The plaintiff's attempts to recover compensation through the Defence Abuse Response Scheme and under the *Victims of Crime (Financial Assistance) Act 1983* (ACT) have been unsuccessful: see *Knight v Commonwealth of Australia* [2016] FCA 1160; *Knight v Australian Capital Territory* [2016] ACTCA 3. The fact that he does not have other remedies available is, in fact, the usual position for persons seeking an extension of time. It is a factor which weighs in favour of the granting of an extension of time. However, it is a matter which must be considered in the context of the extent of damage alleged to have been suffered by the plaintiff and the reasons why the claims were not pursued within time.

Abuse of process

219. At the commencement of the hearing in May 2015 the plaintiff made an open offer to discontinue the proceedings as well as an appeal relating to an earlier decision, namely, *In the matter of an application by Knight under the Criminal Injuries Compensation Act 1983 (ACT)* [2014] ACTSC 337.

220. The terms of that offer are identified in Exhibit 3. In summary:

    (a) The third defendant, Mr Reed, was required to make a statement to the ACT police in relation to his stabbing by the plaintiff on 31 May 1987 and request that proceedings be initiated against the plaintiff in relation to that offence.

(b) After the plaintiff was charged with that offence and extradited to the ACT the plaintiff would then discontinue the present proceedings.

(c) The plaintiff would abide by the undertaking that he gave to the Attorney-General on 2 February 2015 to enter a plea of guilty in relation to those charges. The plaintiff would not seek to call the third defendant as a witness in any sentencing hearing.

(d) The plaintiff undertook to withdraw complaints to ACT police regarding the alleged assault made by the second and third defendants upon him at the Private Bin on 30 and 31 May 1987 and if the ACT police decided not to initiate any prosecution of the second and third defendants then the plaintiff would not file a private prosecution.

(e) No order as to costs would be made.

(f) The plaintiff would retain his right to pursue an application for a reparation payment lodged with the Defence Abuse Response Scheme concerning the same complaints the subject of these proceedings.

221. The plaintiff had made three applications for transfer under the legislation relating to the interstate transfer of prisoners (*Prisoners (Interstate Transfer) Act 1983* (Vic)). He gave evidence that the first application was made in 2011. That was refused by the Victorian Minister for Corrections. He made another application in 2012 or 2013 which was also refused. He made a third application in 2014 which, when he gave evidence, he understood was still being considered by the Victorian Minister for Corrections. The plaintiff's understanding was that "the only way I'm going to be transferred from Victoria to the ACT is if charges are laid in relation to [the stabbing of Mr Reed]". He saw it as beneficial to be transferred from the Victorian correctional system to the ACT system even though his sentence would be unaffected. His evidence was that he felt aggrieved by what happened to him at Duntroon, but that he was prepared to trade-off any possibility of an award of damages in order to obtain a transfer to the ACT. In oral evidence he said:

> Do you agree with the proposition I've put to you?---And that is that I'm prepared to trade off any possibility of award of damages in this proceeding in order to obtain a transfer to the ACT?
>
> Yes?---Unfortunately yes. Now if someone was going to approve my interstate transfer to today, then you can be guaranteed that those terms of settlement would no longer be on the table. They are open and they remain open whilst the current situation exists. If the Victorian Minister for Corrections was to approve my transfer today and this afternoon the Minister for Corrective Services in the ACT was also to approve my application for transfer up there, I can guarantee you that that settlement would no longer be on the table. It certainly wouldn't be on the table on those terms. I am open to negotiation and open to any suggested settlement, but I do make it plain in the strongest terms that unfortunately given the cards I am dealt with that is what I have to offer, and if those circumstances change you can believe me that that settlement would not be offered in those terms.

222. During submissions in August 2015 Mr Knight indicated that, as a consequence of a decision made by the Defence Abuse Response Task force on advice from the Minister for Defence and the Minister for Justice that no application for reparations were to be considered with respect to any claimant that is incarcerated, he withdrew the offer of settlement and indicated that he intended to pursue this matter and the other matters to a conclusion.

223. The defendants submitted that the use of proceedings as a means of achieving an interstate transfer amounted to an abuse of process or alternatively, if the requirements to establish an abuse of process were not satisfied, then it was an improper use of the proceedings and that should be almost determinative in deciding whether or not it was just and reasonable to extend time.

224. In *Williams v Spautz* [1992] HCA 34; (1992) 174 CLR 509 at 526-527 the plurality judgment identifies that proceedings are brought for an improper purpose and constitute an abuse of process where the purpose of bringing them:

> is not to prosecute them to a conclusion but to use them as a means of obtaining some advantage for which they are not designed or some collateral advantage beyond what the law offers.
>
> [Footnotes omitted]

225. It is not necessary for the Court to be satisfied that unfair trial will occur. A stay may be granted even if the trial is fair if the proceedings have been brought for an improper purpose and hence are an abuse of process: *Spautz* at 521. The improper purpose need not be the sole purpose of the moving party so long as it is his or her predominant purpose: *Spautz* at 529. The onus of satisfying the Court that there is an abuse of process lies on the party alleging it and that onus is a heavy one: *Spautz* at 529.

226. Clearly the plaintiff has as a purpose of the proceedings to obtain some leverage and increase the prospect of achieving what he wants to achieve, namely, a transfer from the Victorian prison system to the ACT prison system. Such a transfer may have the effect of removing the impediments that exist in Victoria under s 74AA of the *Corrections Act 1986* (Vic) to a grant of parole (see *Crimes (Sentence Administration) Act 2005* (ACT) s 244) although, as this was not the subject of submissions, it is not appropriate that I reach any final conclusion on that point.

227. I am not satisfied that the obtaining of leverage in order to achieve a transfer was his predominant purpose. It is difficult to identify that as being his predominant purpose in circumstances where he is an inveterate litigant. He was declared a vexatious litigant in Victoria in 2004 and in 2016 that status was extended for an indefinite period: see *Attorney-General for the State of Victoria v Knight* [2016] VSC 488. In the period since 2004 he has pursued numerous cases seeking leave or following a grant of leave by the Victorian Supreme Court. These are summarised in the tables annexed to the judgment of Forrest J in *Attorney-General for the State of Victoria v Knight*. He has also pursued cases in the Federal Court: *Knight v State of Victoria* [2014] FCA 369 and *Knight v Commonwealth of Australia* [2016] FCA 1160, the latter case relating to the decision of the Defence Abuse Response Taskforce that the plaintiff was not eligible for a reparation payment under the Defence Abuse Reparation Scheme established by the Commonwealth.

228. Clearly litigation is an activity which the plaintiff derives some satisfaction from pursuing. For a prisoner of considerable intelligence with a life sentence the pursuit of litigation is likely to be both intellectually stimulating and a forum in which the disempowerment of being a sentenced prisoner is temporarily removed. I am also satisfied that he feels genuinely aggrieved by his treatment and seeks such a vindication as the court system can provide in relation to what occurred during his period at the Royal Military College. I am satisfied that he has a mix of motives for bringing the present proceedings. I am therefore not satisfied that the defendants have discharged the heavy onus of establishing that the proceedings are an abuse of

process. While I am not satisfied that he had the predominant purpose of achieving the ulterior goal of a transfer from Victoria to the ACT, I am satisfied that it was one of his purposes and that the existence of such a purpose is a factor that should be taken into account in determining whether or not it is just and reasonable to extend time.

Conclusion

229. The extension of time sought by the plaintiff is a long one. I have not accepted the plaintiff's explanation for the reason for the delay in commencing proceedings. I do not accept that there is a good reason for the delay. While the claims proposed to be made in the action can be characterised as arguable, most of them are also appropriately characterised as involving trivial matters. Others, while not trivial, would not give rise to other than modest damages. The most significant claim in terms of damages, that against the first defendant for economic loss as a result of the failure of the plaintiff to graduate from the Royal Military College, would face very significant hurdles in relation to causation in the light of the plaintiff's responsibility for the Hoddle Street Massacre.

230. Because of the delay there is significant prejudice to be presumed. Actual prejudice has been established in relation to the circumstances surrounding the minor assaults because of the lack of recollection of those alleged by the plaintiff to be involved and the fact those assaults were not significant enough to generate contemporaneous documentation. In relation to the more serious assaults, while there is contemporaneous documentation still available, there is at least "a significant chance" that the defendants will not be able to fairly defend themselves because of their own lack of recollection and the recollection of other persons who would have been able to give evidence relevant to the case. So far as the claim for economic loss against the first defendant is concerned, notwithstanding the availability of considerable documentation about the progress of the plaintiff at the Royal Military College, if his commission of the Hoddle Street Massacre is not a bar to him in establishing causation, the presumed prejudice arising from the need of the first defendant to address the counterfactual situation that would have arisen if one or more of the particularised incidents had not occurred is likely to be significant.

231. While the defendants have failed to establish that the proceedings were an abuse of process, I take into account the fact that at least one of the purposes of the proceedings was to attempt to use them as leverage to set in train a course of events that might have led to the transfer of the plaintiff to the ACT rather than the vindication of his rights to compensation.

232. In the circumstances I am not satisfied for the purposes of s 36(2) of the Limitation Act that it is "just and reasonable" to grant an extension of time in which proceedings may be commenced. As a consequence I dismiss the application with costs. In the light of the dismissal of the application for an extension of time judgment must be entered for the defendant in the action. Costs will follow the event.

Orders

233. The orders of the Court are:

    1. The undated application in proceeding filed 23 May 2014 and the application in proceeding dated 5 January 2015 are dismissed.

2. Judgment be entered for the defendants in the proceedings.

3. The plaintiff is to pay the defendants' costs of the proceedings.

I certify that the preceding two hundred and thirty-three [233] numbered paragraphs are a true copy of the Reasons for Judgment of his Honour Associate Justice Mossop.

Associate:

Date: 13 January 2017

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