

Our Ref: MXW:368227
Your Ref:



Piper Alderman

8 February 2010

By Email: 'isabel.parsons@[REDACTED]

Victorian Government Solicitor
PO Box 4356
MELBOURNE VIC 3001

Attention: Isabel Parsons

Dear Ms Parsons

Witness F

We refer to our previous correspondence including our unanswered letters to you dated 18 January 2010 and 29 January 2010.

We are now instructed as follows:

1. On or around 28 January 2010, Mr Dale's solicitor served upon your client a Subpoena for the production of materials in anticipation of Mr Dale's committal proceeding scheduled to commence on 9 March 2010 (the Subpoena).
2. Although our client has not sighted nor been provided with a copy of the Subpoena, our client informs us that, in its current form, the Subpoena seeks the production by your client of a number of classes of documents and/or items which either directly relate to or emanate from our client. We are informed that certain of these classes of documents and/or items go directly to the issue of other assistance our client may have provided to your client in investigations other than that of Mr Dale.
3. Leaving aside the fact that the evidentiary protections otherwise afforded by the *Witness Protection Act* have now been irretrievably lost as our client was not granted access to the *Witness Protection Act* prior to service of the Subpoena, the production by your client of certain classes of documents and/or items in answer to the Subpoena will undoubtedly further endanger our client's safety not to mention exponentially increase our client's stress and anxiety and further aggravate her current medical conditions. Our client has previously detailed her concerns in this regard, and made repeated requests that she be entitled to be independently represented at any hearing concerning the scope, validity or otherwise of any Subpoena served by Mr Dale which sought documents directly affecting her safety in (without being exhaustive):
 - (a) her discussions with Detective Senior Constable Cameron Davey and Detective Sergeant Sol Solomon in late 2008 and early 2009;
 - (b) her discussions with Detective Senior Sergeant Shane O'Connell commencing in late 2008 and continuing throughout 2009 until around 20 November 2009;

Lawyers

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To: Victorian Government Solicitor
 Date: 8 February 2010
 Our Ref: MXV:368227
 Page: 2



- (c) her discussions with Inspector Steve Smith commencing in early 2009 and continuing throughout 2009 until around 20 November 2009;
 - (d) her discussions with Superintendent Geoff Allway commencing in early 2009 and continuing throughout 2009 until around late June 2009;
 - (e) a meeting attended by you, Mr Ryan and Superintendent Geoff Allway on 12 June 2009;
 - (f) a meeting attended by Superintendent Rod Wilson on 9 October 2009; and
 - (g) letters to your client dated 7 September 2009 and 28 September 2009.
4. Additionally, and as was raised in each discussion or meeting referred to in the preceding paragraph, and as was in fact raised with you and Mr Ryan at the meeting you both attended with our client on 12 June 2009, our client has maintained that it was not and is not an appropriate or acceptable safeguard for your client to rely upon a claim for public interest immunity as a means of answering the Subpoena. As you are aware, such claims are of limited utility but more relevantly, in the circumstances of our client will, if made, inevitably lead to our client being labelled as a police informer. Such a label will put our client's future safety at immeasurable risk.
 5. Given that your client has been on notice of our client's concerns since at least late 2008, and given that your office has been aware of these matters since at least March 2009, we are surprised and troubled that your office has neither provided us with a copy of the Subpoena nor notified us that it has been served and was in fact returnable on Monday 1 February 2010 for argument in the Melbourne Magistrates' Court. Indeed, we find it remarkable that your office, having been aware of the return date (as demonstrated by the retainer of Mr Gibson of Counsel who appeared for Victoria Police on your instructions on 1 February 2010), did not see fit to inform us of the progress of the matter or seek instructions regarding whether our client ought to be separately represented given what we understand to be the breadth of the last paragraph of the Subpoena.
 6. The conduct of your office and your client in failing to provide our client with a copy of the Subpoena has denied her the opportunity to properly consider the scope of the Subpoena including the exact nature of the classes of documents and/or items sought, to obtain suitable legal advice and/or seek representation at any hearing on the return of the Subpoena, including the hearing which occurred on 1 February 2010.
 7. We require a copy of the Subpoena served on the Chief Commissioner of Police to be provided to us by no later than **10 February 2010**. Please telephone the writer should you have any objection to furnishing us with this document so that we can arrange for the matter to be raised at a special mention hearing we will otherwise arrange. Of course, this letter will be produced to his Honour Mr Reardon on the question of costs should such a mention hearing be required.
 8. In the interim, we are otherwise instructed to put you on notice that our client will hold your client liable for any harm, loss and/or damage that she suffers as a result of your client producing documents in answer the Subpoena which, in any way, further jeopardise her safety, where:

To: Victorian Government Solicitor
Date: 8 February 2010
Our Ref: MXW:388227
Page: 3



- (a) with the prior opportunity to obtain representation and be heard, our client could have successfully challenged the production of such documents; or
- (b) the requirement to produce such documents in answer to the Subpoena would have been obviated had your client provided our client with access to the Witness Protection Program prior to the service of the Subpoena.

Yours faithfully
Piper Alderman

Per: 

Mark Waters
Partner

