A plaintiff lawyer's guide to suing the police

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A previously charmed life for the police under civil law?

The State of Victoria achieved media notoriety in the nineties, for its unenviable record of killings by police.

In the same period, Western Australian citizens expressed outspoken concern about the dangers of dying as the spin-off victims of high-speed police car pursuits of fleeing offenders.

While common law actions in negligence have become prolific within the Australian community, some police tortfeasors have, until fairly recently, led a charmed and relatively litigation-free life. Now, in a new trend, police are increasingly becoming the targets of negligence suits, alleging liability in "operational policing functions".

It is clear that the Australian public will no longer tolerate any perception that the police are above the law. Commissions of Inquiry such as the Fitzgerald investigations in Queensland, and similar anti-corruption probes in other States, have reminded police and the community that law-enforcers cannot themselves disregard the criminal law, and recent cases such as *Zalewski v Turcarolo*, (1995) 2 VR 562, have brought the message that police will not be immune from the civil law either.

As Richard Clayton and Hugh Tomlinson have said in *Civil Actions Against the Police* (1992), Maxwell, at p 345:

> "There is no doubt that a police officer is potentially liable in negligence to a person injured as a direct result of his acts or omissions ... The fact that the police are engaged in "policing" activities does not exempt them from ordinary duties of care. These duties of care are not "negatived" just because the police are engaged in difficult or dangerous work, but the nature of this work is taken into account in assessing the applicable standard of care"

Civilian death and injury as a result of police action: some relevant recent statistics

In 1998, the Criminal Justice Commission of Queensland researched the question of "Police Pursuits in Queensland, Resulting in Death or Injury".

Data presented in the CJC research report indicate that between the periods of 1992-93 and 1996-97, a total of 13 persons died in Queensland as a result of police pursuits of offenders, during which firearms were discharged in fourteen instances. Ninety other persons sustained injuries during such pursuits.

Other comparative data are available to indicate that in the same period, the rate of police pursuits resulting in death or injury per 1000 police officers was 2.2 in Queensland, compared with 4.6 in Victoria and 12.7 in Western Australia. The average annual number of such incidents was 12.6 in Queensland, by comparison with 42.2 in Victoria and 57.2 in Western Australia.

More civilians have died as a result of police pursuit than have been killed or injured by police guns. But nationally, both these kinds of deaths involving questionable conduct by police officers, are subject to a newer, higher level of community scrutiny than ever before. No longer are accidents following high speed car chases put down to the vagaries of fate and bad luck.

Dalton, in the Australian Institute of Criminology's Research and Public Policy Paper No. 10, made the following comment in 1997, at p31:

> "During 1996, 11 people died from injuries received in a motorcycle or motor vehicle crash in the course of, or immediately following, a police pursuit ... the need exists for some police services to address procedures relating to situations such as police pursuits and sieges where police are in the process of detaining, or attempting to detain, the individuals who died."

That such policy changes were necessary had already been adequately demonstrated by Homel's 1990 Report to the Police Department of Western Australia, ("High Speed Police Pursuits in Perth"), which showed that an accident was a very common outcome of police pursuits, occurring in one out of every four such incidents.

There has also been enormous financial loss to the community resulting from operational policing functions. A 1990 New South Wales study by Donohue, into "Police Pursuits and Urgent Duty", showed that car accidents in police pursuits cost the community $14 million, comprising vehicle and property damage of $1 million; $1.9 million of police personnel costs, including sick leave, restricted duties, lowered productivity and morale after fatalities, and personnel replacement and training costs; and $11.2 million community costs, involving legal, medical and administrative costs, victim pain and suffering and foregone income).

Homel's Western Australian study, referred to above, demonstrated that the average costs of a police pursuit which ended in accident, involved an average of $1,240 damage to police vehicles. The average all-up community cost of all the police pursuits conducted was around $1,000.

Recent police reaction to public concerns - guidelines laid down

The bad press occasioned by the deaths of innocent civilians and its consequent effects on police service morale and public relations has led, in a number of States, to abrupt changes in police operational procedures and functions, with negligent police performance increasingly being open to litigation. For example, the *Operational Procedures Manual* of the Queensland Police Service now lays down certain requirements for police pursuits.

A "police pursuit" is defined as occurring when: "An attempt is made to apprehend the driver of a motor vehicle and the driver resists apprehension by maintaining or increasing their speed or by ignoring the police officer's attempt to stop the vehicle."

The policy requires police officers to "use sound professional judgment" and to weigh up the following factors:

- all of the circumstances including the seriousness of the offence;
- all of the possible consequences;
- most importantly, the safety of all persons (including the officers).

The provisions attempt to ensure that the benefits of pursuing a fleeing offender outweigh the threat to public safety. Pursuits are to be disengaged when the police officer conducting the pursuit is ordered to do so by the officer responsible for the control of the pursuit or when:

(i) the police officer exposes the public or police to high risk or unnecessary danger;
(ii) continuing the pursuit is futile;
(iii) the offence is not serious and the identity of the offender is known; or
(iv) the pursuing police officer knows or believes that the pursued vehicle is being driven by a juvenile and the offence is not serious.

Immunity of police officers - the traditional position

In a recent case which perhaps demonstrates the newer, harder line beginning to be taken against police misbehaviour, the Queensland Court of Appeal, in *Bevis v Priebe ex parte Bevis* [1998] 2 Qd R 1, examined s68 of the *Traffic Act* 1949, which provided that those provisions of that Act about offences, did not apply to a police officer exercising a power, or performing a function under that or another Act. It was held that section 68 did not apply to a police officer who was merely doing an act "incidental to the performance of a function under an Act". Accordingly, a police officer who disobeyed a red traffic light signal, while driving to a police station to obtain a kit with which to test a person he suspected of drink driving, had committed an offence.

Other similar examples of statutory provisions of police semi-immunity are to be found in s51(A) of the *Police Act* 1952 (SA), s213(1) of the *Police Service Act* 1990 (NSW), and s52 of the *Police Regulation Act* 1898 (TAS). These provide statutory "acting in good faith" defences, protecting police officers from liability where the officer is exercising a function conferred by law in relation to protecting persons from injury or death, or property from damage. In South Australia, a police officer ▶

is not personally liable for tortious conduct and liability is statutorily shifted to the Crown. An example of the sort of police behaviour which would not attract a "good faith" defence if such statutory protection applied in a particular jurisdiction would be the facts of *Farrington v Thomson* (1959) VR 286, where police ordered a hotel licensee to close down and cease business, thereby intentionally purporting to exercise a power which they knew they did not have, and being guilty of the tort of misfeasance in public office.

However, the common law has been steadily making some inroads into the broad philosophy of "public policy immunity", which also featured in some of the earlier English cases.

Although police drivers responding to an emergency, or hotly pursuing a suspect, are statutorily permitted to do things which will be offences in the case of other drivers, (such as exceeding the speed limit and driving on the wrong side of the road), this does not absolve them from owing a duty of care to other road users.

Although the statutory provisions may exempt police drivers from criminal liability in breaching traffic laws, they are not exempted from civil liability if they injure other persons. Like all other road users, police car drivers are legally bound to take reasonable care for the safety of others, such "reasonableness" being determined in the context of all the circumstances.

In *Marshall v Osmond* (1983) 2 All ER 225, the English Court of Appeal held that the duty of a police officer to a suspect being hotly pursued was the same duty as that owed to any other user of the highway. (See also *Schilling v Lenton* [1988] 47 SASR 88 and *Winter v Commonwealth* (1995) 111 FLR 275).

Thomas J applied the principle of *Marshall v Osmond* in *Schultz v Morrison* (1984) 1 MVR 34. In this case, a police sergeant, while passenger in a police car driven by a constable, sustained injuries when the police car hit a telegraph pole. The police driver was exceeding the speed limit while on the way to where two men had been reported as acting suspiciously, and was overtaking another vehicle which was in the process of turning right. The police driver was held to be negligent, because there was no real emergency and no need to drive at an excessive speed.

Negligence in "police operational functions" generally

There have been a number of other judgments holding negligence by police in on the spot, operational actions:

AUTHORITY	RELEVANT FACTS
1. *Gaynor v Allen* [1959] 2 QB 403	Pedestrian injured as a result of negligent driving by motor cycle policeman; police motor cyclist's estate held liable for damages.
2. *Bunn v Attorney-General* [1975] 1 NZLR 718	Group of demonstrators dispersed by police with dogs; plaintiff demonstrator negligently kicked and injured.
3. *Beim v Goyer* [1965] SCR 638	Police officer, on foot, gun in hand, pursuing driver of stolen car over rough ground; police officer stumbled while firing a warning shot into the air; offender was accidentally shot; negligence found on part of police officer.
4. *Knightley v Johns* [1982] 1 WLR 349	Police inspector ordered another police officer to ride against the flow of traffic through a tunnel; police motor cyclist knocked down and injured; inspector held liable in negligence.
5. *Rigby v Chief Constable of Northamptonshire* [1985] 1 WLR 1242	Dangerous intruder in shop; police fired a gas canister into the shop to flush him out; the gas canister set the shop on fire, and there was no firefighting equipment available; police held negligent.
6. *Johnston v Woolmer* [1977] 16 ACTR 6	Driver of police vehicle pursuing speeding car and driving too close to it, found to be contributorily negligent in collision between two cars. Damages payable to injured police officer who was a passenger in the police vehicle.
7. *Blight v Warman and McAllen* [1964] SASR 163	Police van escorting an ambulance at high speed, signalled through intersection at direction of another police officer on duty at intersection; collision with taxi; police driver held negligent.
8. *Fettke v Bogovic* [1964] SASR 119	Police officer giving a driver's licence road test to an applicant, held to have a duty of care to other users of the road.

9. *Kirkham v Chief Constable of Manchester* [1990] 2 QB 283	Police knew of suicidal tendencies of a prisoner, but failed to advise prison authorities. Police liable.
10. *Bryson v Northumbria Police Authority*	Police prematurely and negligently released a person under arrest for drunkenness; he was soon after killed in a traffic accident.
11. *Howard v Jarvic* [1958] 98 CLR 177	Police country lock-up prisoner negligently left in possession of matches; prisoner burnt to death; police liable.
12. *Schilling v Lenton* (1988) 47 SASR	High speed police chase in wet conditions, of fleeing drunk driver; offender braked sharply at red light and police car smashed into rear of pursued car - held to be contributory negligence by police.
13. *Patterson v McGinlay* (1991) 55 SASR 258	Police car, with siren sounding and blue light flashing, proceeded at speed through a red traffic light and collided with a car that had the green light. Each driver found 50% liable.
14. *Commonwealth of Australia v Winter* (1993) Aust Torts Reports 81-212	Police, attempting to stop a speeding motor cyclist, turned their car across a median strip in an attempt to set up a road block. The motor cyclist clipped the front of the road block vehicle and was injured. Police held negligent because of failure to exercise care in setting up road block so as to stop the offender, rather than injuring him. Police action held to be an inherently dangerous manoeuvre, likely to cause danger to other road users.
15. *Akers v P* (1986) 42 SASR 30	A woman called police to a domestic incident. The police ordered the inebriated male person involved in the domestic dispute to get on his motorcycle and leave. The police ignored protests that the man was too drunk to drive (blood alcohol turned out later to be .272) and again ordered him to leave, under threat of arrest. He rode straight into a set of traffic lights and was injured. Police held negligent.

Police liability for injuries to persons in custody

The liability of police for the safety of detainees, which was featured in Bryson and Howard above was recently reinforced by the decision in *Jones v State of New South Wales* (1999) Aust. Torts Reports 51-220. In this case, a young female Aboriginal heroin addict sustained serious injuries after falling from a fifth storey window while in police custody. It was argued by the Plaintiff that she was owed a special duty of care to prevent her injuring herself while in police custody, because of her fear of incarceration and her judgment thereby being affected. The police officers did not have a proper system in place to ensure that the plaintiff did not injure herself, nor had they conformed to standard police operational instructions. The State of New South Wales was held liable to the extent of 70%, because of the negligence of its officers.

Police as servants of their employing authorities

Reference to some of the cases above shows that certain governmental authorities, local, state and national, are now beginning to be sued as vicariously liable for the torts of their servant police officers. It was not always so. There was previously a well-established general principle that a police constable is exercising an independent function and is not the servant of the Crown, or an agent or servant of whoever appointed him, and it has to be emphasised that liability for the torts of police officers still does not generally or automatically lie upon the Crown, unless it is statutorily placed there, as in South Australia, for example, and also in the Northern Territory, where s163 of the *Police Administration Act* provides that the ordinary principles ▶

of vicarious liability apply.

In *Fisher v Oldham Corporation* [1930] 2 KB 364, the corporation was sued on the basis that it was vicariously liable for a tort committed by a constable of the borough police. In his judgment McCardie J relied upon the cases of *Stanbury v Exeter Corporation* [1905] 2 KB 838 and *Enever v The King* [1906] 3 CLR 969.

In *Stanbury v Exeter Corporation* Willis J approved of American decisions and held that an inspector of animals was analogous to a police officer, both being members of a class of officials for whose negligent acts local authorities were not liable. This principle was reinforced in *Enever v The King* where, in the High Court of Australia, Griffiths CJ stated:

> "Now the powers of a constable, qua police officer, whether conferred by common law or statute law, are exercised by him by virtue of his office and cannot be exercised on the responsibility of any person but himself ... A constable therefore when acting as a peace officer, is not exercising a delegated authority, but an original authority..."

This passage was cited with approval by McCardie J and formed the basis of his decision that there was no master-servant relationship between the constable and the Corporation.

In *Attorney-General for NSW v Perpetual Trustee Co* (1952) 85 CLR 237; [1955] AC 457, unlike Fisher above, the Crown was seeking to establish a master-servant relationship in a per quod servitium amisit action where a New South Wales police officer had been injured in a collision. The High Court of Australia and Privy Council upheld the rule enunciated in *Enever v The King and Fisher v Oldham Corporation* and Viscount Simonds described the constable's position as that of an officer whose "authority is original, not delegated, and is exercised at his own discretion by virtue of his office; he is a ministerial officer exercising statutory rights independently of contract". The Privy Council held:

> "For the appellant, great stress was laid on the change that had taken place in the organisation of the police force in England since the first Metropolitan Police Act of 1829 was passed. No doubt great changes have been made, which are reflected in the organisation of the police force in New South Wales to-day, but the substantial change was made long before *Enever's* case was decided in Australia or *Fisher's* case in England, and those cases show convincingly that neither changes in organisation nor the imposition of ever-increasing statutory duties have altered the fundamental character of the constable's office. To-day, as in the past, he is in common parlance described in terms which aptly define his legal position as 'a police officer', 'an officer of justice', 'an officer of the peace'. (At 480)"

In *Ramsay v Pigram* (1968) 42 ALJR 89, a driver was injured when his car was involved in a collision with a New South Wales police vehicle being driven by a police officer. Barwick CJ, in obiter, suggested that in the case of the driver of a police car it may be necessary to determine whether he was functioning as a constable, or as a car driver:

> "It may be said that but for s16 (*Motor Vehicles (Third Party Insurance) Act 1942-51*) the respondent would have no cause of action against the appellant because the police officer, being a constable was not in his activity as such the servant or agent of the Government so as to make his act in driving the car the act of the Government or the department. This is not a question I need pursue as the matter was not argued nor is enough known by inspection of the pleadings to determine whether or not the police driver was functioning as a constable or though a constable merely as a car driver in the employ of the Government or department."

While the "police immunity" and "police as non-servants" principles do appear to be undergoing a gradual judicial shift, with some statutory intervention, the current law is that if a Crown servant has been given immunity by statute, so that his or her behaviour is rendered non-tortious, then the Crown will not consequently be vicariously liable. (See *Cowell v Corrective Services Commission of New South Wales* 13 NSWLR 714 and *De Bruyn v The State of South Australia* (1991) 54 SASR 231. However, in New South Wales, the position has been explicitly reversed by statute in the *Law Reform (Vicarious Liability) Act* 1983, at s10.

Thus, the Crown and its servants no longer always enjoy their old traditional immunity from actions in tort. (*Fraser v Hamilton* (1917) 33 TLR 431 and *Commonwealth of Australia v Connell* (1986) 5 NSWLR 218). In the absence of statutory exemptions, a Crown employee can now ordinarily shift liability to the Crown employer for any tortious act done in the course of employment. Such reliance on vicarious liability will not be possible, however, if the conduct of the police was outside the scope of their employment, such as the menacing of a terrified arrested person with a revolver, and discharging the firearm in his close proximity. (See *Lackersteen v Jones* (1988) 92 FLR 6).

Police shootings

It is now clear that police officers may be liable in negligence as a result of their use of firearms while in operational situations.

In *Zalewski v Turcarolo* (1995) 2 VR 562, the Appeal Division of the Supreme Court of Victoria (Brooking, Phillips and Hansen JJ) dismissed an appeal by a police officer Zalewski and the State of Victoria against a high court finding that the police officer had been negligent in entering a room and shooting an armed person who was suicidal. The police officer was experienced and had acted impetuously without due inquiry, due care, or proper reflection, in disregard of police procedures and instructions.

Hansen J, at 565ff, summarised the facts:

> "Turcarolo was 22, with a history of mental disturbance. On a number of occasions police had been called to his home. One such incident had involved the brandishing of a knife. On 5 October, 1985 Turcarolo got his father's shotgun, loaded it and then returned to his bedroom. Turcarolo's father asked him on several occasions to give up the gun, and then called police because he was afraid Turcarolo would commit suicide. Several units attended the scene but awaited the arrival of Sergeant Zalewski, who was the senior member. On arrival, Zalewski allowed the father to try once ▶

Councils' accident liability bills soar

By TIM JAMIESON
Urban Affairs Writer

People who tripped over footpaths and children hurt in playground falls are among 14,000 litigants who have won more than $38 million in damages from Sydney's councils.

The number of claims has soared by 100 per cent over the past five years, and the size of damages has also increased — up from an average of $20,000 10 years ago to between $200,000 and $400,000 now.

Personal injuries account for 42 per cent of all public liability claims, yet account for more than 73 per cent of the cost to councils.

The latest available figures, which are based on 19 councils' costs over the past 10 years, were part of a joint submission three metropolitan council insurance pools submitted to the NSW Government 18 months ago.

They pushed for legal reforms to cap liability claims, but, despite a review a State Government working party carried out last year, the councils said nothing has been done.

Councils have closed playgrounds, replaced equipment and diverted much needed revenue from funding creches and other community services to defending and paying the growing number of cases being brought before the courts.

Lawyers enticing litigants with "no win, no fee" deals and the "benevolent" attitude of judiciaries, who show a "Robin Hood" philosophy to helping claimants, explain why the number of claims and costs are escalating, the submission said.

The report said a significant proportion of claims were from people who had tripped on uneven footpath and road surfaces. But with more than 144,000 kilometres of rural and metropolitan routes, the job of maintaining the roads is huge.

Replacing torn shoes to paying medical expenses was enough for some people, Waverley Council's general manager, Mr Michael McMahon, said.

"But for others, once they see the dollar signs in their eyes it's like winning the lottery," he said. "And it's tax free."

Lawyers take about 60 per cent of their client's claim, Mr McMahon said.

In Fairfield a woman was awarded several hundred thousand dollars after she slipped and broke her leg on a community centre floor. The award was made, even though the council found shreds of paper on the sole of her shoes and claimed she had slipped on a paper napkin. But a man lost his $200,000 claim after he tried to sue the council when he took a short cut through a private garden and hurt himself as he jumped the fence and fell into a council drain.

Now councils are fighting back.

Fairfield said it had won 70 per cent of cases in the past five years. Improved risk management underpinned much of the success, the council's manager of governance and risk, Mr Andrew Armitstead, said.

While the council was sensitive to bona fide claims, Mr Armitstead warned that people risked having to pay the council's costs if the courts ruled in their favour. Fairfield has already approached the Sheriff's Office in a bid to recoup its costs against one unsuccessful litigant.

"What are councils supposed to do? Do we close down sporting fields? Do we stop people playing cricket? I don't think so, but that's what we're coming to," Mr Armitstead said.

again to convince his son to give up the shot gun, which he again refused to do. Zalewski and another police officer then approached Turcarolo's bedroom with guns drawn. Turcarolo refused to come out but invited the police to enter his room. Zalewski then opened the door and saw Turcarolo, looking straight at them, sitting on the floor with the shot gun resting in his lap. He had one hand on the barrel and the other on the trigger. Both police pointed their guns and shouted at Turcarolo to drop the gun. Turcarolo was hit by shots from both police officers and injured. Sgt Zalewski gave evidence that he was lowering himself to get out of the line of the shotgun but the gun was still aimed at him. When Turcarolo made a movement, both police fired, believing that he was about to shoot them. Turcarolo denied that he either intended or attempted to shoot. He stated that he was falling asleep when he heard something like "would you come out". The gun had been pointing toward one wall and when he turned in the other direction at the call, the gun ended up pointing at the doorway."

Negligence in police shooting, or not?

Hansen J wrote the leading judgment and the other two judges agreed.

The central issue considered was whether there was a breach of the duty of care (see 572ff). In deciding whether there was a breach, the court considered whether a reasonable man in Zalewski's position would have foreseen that his conduct involved a risk of injury. Hansen J found that the test had been met. At 573 he said:

> "In my opinion it was open to the jury to conclude that when Zalewski responded to the situation by opening the door and confronting and shouting at the respondent (Turcarolo), it was foreseeable that the respondent might point a possibly loaded gun at one or both of them or that in moving or reacting in this or some other way the police officers or one of them may fire a shot or even be shot at. It is to be remembered that Zalewski understood the respondent had twice pointed the gun at his father. By opening

the door and addressing the respondent in the way in which they did, they confronted him with a sudden and urgent situation in which it was open to the jury to find that the reaction of the respondent which led to the police shooting was a foreseeable consequence. It was a real risk foreseen by Zalewski, and not far-fetched or fanciful, that as a consequence of the opening of the door, the respondent would behave in such a way as to make it necessary for them to shoot him in self-defence."

It was also held that regardless of whether or not the actions of Zalewski in shooting Turcarolo had been justified, it was still:

"...open to the jury to find that a reaction of a kind which gave the police officers an apprehension of threatening behaviour could have been anticipated by them as the reaction of a person with a mentally disturbed mind when confronted with a sudden and unexpected situation at the doorway of his bedroom. It was also open to the jury to find that Zalewski acted too quickly, without time for proper inquiry and reflection concerning the respondent and his likely reactions, and to plan his approach accordingly with less confrontation and in a manner consistent with his training for such a situation, the primary object of which was to save life and avoid injury. For all of these reasons I am of the opinion that it was open to the jury to find negligence on the part of Zalewski", (see 573).

Defences raised in Turcarolo

The appellants raised a number of defences justifying the shooting. Reliance on s463B, *Crimes Act* 1958 was rejected on the basis that Zalewski was aware that Turcarolo had previously threatened suicide (at 574).

It was also argued that even if there had been negligence by Zalewski, he was immune from liability on the grounds of public policy. The appellants argued that such an immunity will apply to on the spot operational decisions made by police officers made in good faith on the basis of their instructions, training and orders, and in the exercise of a lawful power (see 574). It was further argued that such immunity was for the benefit of the public, because in the absence of such an immunity, investigative operations would be carried out in a "detrimentally defensive frame of mind", which would inhibit the exercise of discretion and judgment, and would detract from the general sense of public duty which motivates police. The appellants cited an English authority for the existence of such an immunity.

Hansen J held that there was no Australian authority to uphold an immunity, but did concede that an immunity could possibly be applicable in a future case:

"That is not to deny, though, that in any appropriate case considerations of a public policy nature may exist which ought to be held to exclude liability. But whether that is so and whether such exclusion will be of a duty of care by reason of the relationship or other factors which may affect the existence of a duty of care, or by reason of a separately identified principle of public policy will have to be considered in an appropriate case.

Even if one is to accept there may be an immunity as found in the English cases, the present is a different case. This is a case of an experienced police officer who it was open to the jury to find acted impetuously, without due inquiry and reflection, in disregard of police instructions, in the face of a risk of provoking a situation involving a person with a psychiatric or psychological condition and who did provide by his actions a situation which it was open to the jury to find was a probable consequence of his actions", (at 578).

The appellants also argued the issue of causation, submitting that the cause of Turcarolo's being shot, was not the action by Zalewski in opening the door, but rather the conduct of Turcarolo himself, after the door was opened, which had exposed him to the risk of injury. That argument was also rejected by the appellate court:

"It was open to the jury to accept that the action of Zalewski in opening the door involved a risk of injury to the respondent by shooting. In my view the jury must be taken as having approached the case in this way. It was then open to the jury to find that the events which occurred thereafter and which led to the respondent being shot were the kind of thing that was likely to occur as a result of Zalewski's conduct. It is clear that the jury so found, and that accords with the "logic and common sense" of the situation."

Implications of *Zalewski v Turcarolo*

The Turcarolo judgment carries the following messages to plaintiff lawyers:

- Police are subject to the law of negligence in their operational, on-the-spot functioning.
- There is the possibility of a future recognition by the courts of a limited immunity, on public interest grounds.
- Whether police negligence has occurred or not, is determined by the reasonableness of police behaviour.
- The reasonableness of police behaviour will depend on the overall circumstances and whether police have acted in accordance with their training and instructions.
- Police attending incidents must seek to obtain all the information they can, and explore all the options open to them before taking any course which may result in injury. ■

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