SUPREME COURT OF QUEENSLAND

CITATION:	*Lucy (Xiaoshuang) Lu v Andrew Petrou & the State of Queensland & the Commonwealth of Australia* [2011] QSC 57
PARTIES:	**Lucy (Xiaoshuang) Lu** (Applicant) **v** **Andrew Petrou** (First Respondent) **And** **State of Queensland** (Second Respondent) **And** **Commonwealth of Australia** (Third Respondent)
FILE NO:	11613/10
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	28 March 2011
DELIVERED AT:	Brisbane
HEARING DATE:	25, 28 February 2011
JUDGE:	Philippides J
ORDER:	1. The proceeding brought pursuant to claim 11613/10 be permanently stayed. 2. Pursuant to rules 389A(3)(b) and (4) of the Uniform Civil Procedure Rules 1999 (Qld), that the plaintiff not start a similar proceeding to proceeding 11613/10 against the first, second or third defendants in proceeding 11613/10 whether in this Court or any other Court without the leave of the Court.
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – where the plaintiff has on two previous occasions commenced proceedings against the same defendants – where allegations in those proceedings are substantially the same as present proceeding – where applications made by defendants seeking various orders, including that the proceeding be struck out, and orders that the plaintiff be prohibited from instituting further proceedings against them concerning allegations made in the present proceeding without obtaining

leave of the Court – where reliance placed on the court's inherent jurisdiction to prevent abuse of process, including by restraining the plaintiff from pursuing the same allegations in fresh proceedings – whether power should be exercised

PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER RULES OF COURT – whether the plaintiff has made more than one application in relation to the present proceeding that is "frivolous, vexatious or an abuse of process" – whether the plaintiff should be ordered not to start a similar proceeding in this Court against the defendants without the leave of the Court pursuant to Rule 389A(3)(b) of the *Uniform Civil Procedure Rules* 1999 (Qld) – whether the plaintiff should be ordered not to start a similar proceeding in another Court against the defendants without leave of the court pursuant to Rule 389A(4) of the *Uniform Civil Procedure Rules* 1999 (Qld)

Constitution Act of Queensland 2001 (Qld) s 58
Personal Injuries Proceedings Act 2002 (Qld) s 9(1)
Uniform Civil Procedure Rules 1999 (Qld) r 171, r 293, r 389A
Vexatious Proceedings Act 2005 (Qld)

Holmes v Adnought Sheet Metal Fabrications Pty Ltd & Queensland Corrective Services Commission [2003] QSC 321
Mbuzi v Hall [2010] QSC 359
McDowall v Reynolds [2006] QSC 414
O'Shea v Cameron [1996] QCA 037
State of Queensland v Coffey [2005] QSC 212
UI International Pty Ltd v Interworks Architects Pty Ltd & Ors [2007] QSC 096
von Risefer & Ors v Permanent Trustee Co Pty Ltd & Ors [2005] 1 Qd R 681, QCA 109

COUNSEL: A Petrou for the first defendant (self represented)
PB Rashleigh for the second defendant
O Perkiss for the third defendant
L Lu for the plaintiff (self represented)

SOLICITORS: Crown Solicitor for the second defendant
Norton Rose for the third defendant

Chronology

Proceeding No 12700/09

[1] The plaintiff ("Lucy Lu") initiated proceedings on 12 November 2009 by Claim and Statement of Claim numbered 12700/09 against the first defendant (Andrew Petrou), the second defendant (the State of Queensland) and the third defendant (the Commonwealth of Australia). On 10 December 2009, an Amended Claim and Statement of Claim was filed. The claim, which appears to have been essentially a claim for damages for personal injuries, was expressed as follows:

"1. Andrew Petrou who has harassed me for 3 years long, made me lose my clinic and caused a lot of psychological injury.

2. The Queensland Police Service, whom have placed me on the police black list acted in a irresponsible attitude, use the police system against me for 4 years long, to support and cover crimes committed against me.

3. The Australian Federal Police whom participate in tormenting me and in collaborating with the Queensland police service in these false activities to be against me.

4. The above three Defendants injure me for 4 years long, they should apologize to me sincerely, also give me a fair compensation for loss of business, physical & mental injury".

[2] The plaintiff claimed the following in the prayer for relief:

"a. Andrew Petrou should compensate me:

i. To lose my clinic or build another new one. $50,000.

ii. To lose all my loyal patients. $150,000.

iii. To lose a business chance that includes not buying a house yet but house prices more appreciated now. $74,000.

iv. To always need to move residency cost. $50,000.

v. For 3 years since I lost my clinic income as: 1080 days X $500 (this is the average income for owner for Chinese medicine clinic) = $540,000.

vi. Declined health, treatment fees, etc 1080 days X 200 = $216,000.

vii. Total $1,080,000.

b. The Second and Third Defendants should compensate me:

i. I am a good author as I own another business as it is a company that includes writing, publishing, selling of

books; shoot and sell movies and TV shows; etc. But now I am in fact have deep mental injuries, and all these business all needs great spirit to concentrate in work. But experienced so many terrible matters, my brain cells have deep injury and I cannot work well in all the above. I am 43 last year, which is a prime working time, but I cannot work, if only calculate I will lose the above 4 item in my whole life time, and every item income only worth to $2,500,000. Together my lost money from spirit injures will be: $10,000,000.

ii. My medicinal business lose about $5,000,000.

iii. My body treatment fee include in mental and body: $5,000,000.

iv. In 4 years I have no love life and social life, and I lost 4 years time to looking for a good husband, in all my life time I lost in love and natural good life is worth $2,000,000.

v. All total to $22,000,000. Police system should compensate all of above fee to me.

vi. Here, the Queensland police service are at most fault duty, so should charge 70%, total: $17,600,000.

vii. Australia federal police should charge 30%, total: $4,400,000."

[3] The second defendant filed a Notice of Intention to Defend and Defence on 15 December 2009. On 17 December 2009, the second defendant filed an application seeking, *inter alia*, that the plaintiff's claim be struck out as she had failed to comply with the pre-court procedures under the *Personal Injuries Proceedings Act* 2002 ("PIPA"). A similar application was filed by the third defendant on 19 December 2011. On 22 January 2010, M Wilson J, by consent, dismissed the plaintiff's action.

[4] On 8 February 2010, the plaintiff filed an application seeking to have the consent order of M Wilson J set aside. The plaintiff claimed, amongst other allegations, that she had not been served with some of the affidavit material and that in agreeing to the consent order, her legal representatives acted without authority. On 10 March 2010, A Lyons J dismissed that application with costs awarded to the second defendant on a standard basis. In delivering her judgment, A Lyons J found that the provisions of PIPA applied and that, as the proceeding was commenced without complying with the pre-court procedures under PIPA, it was void. Additionally, she held that the Statement of Claim was not pleaded so as to allow the second defendant to know the case it had to meet. Her Honour emphasised to the plaintiff that her claim was not at an end but that she should comply with the pre-court procedures under PIPA.

Proceeding No 2538/10

[5] On 12 March 2010, the plaintiff filed a fresh Claim and Statement of Claim in proceeding number 2538/10 against the same three defendants. The plaintiff claimed:

> "1. Andrew Petrou played many improper acts against me for 3 years long to break my two businesses.
>
> 2. The Queensland Police Service, who placed me on the police black list, acted with a very irresponsible attitude, and used the police system against me for 3 years. The QPS has acted in breach of its duty by supporting and covering all crimes committed against me.
>
> 3. The Australian Federal Police has joined with the QPS in these false activities against me.
>
> 4. The above three defendants have taken an advantage that interferes with my legal right to conduct my business. They pushed my business into a very difficult condition and actually caused me to finally lose my clinic at Buranda in September 2008. They have also caused great damage to my publishing business career and caused me to lose a huge amount of my income.
>
> 5. The above three defendants should give me fair compensation."

[6] As can be seen, the claim was in substantially similar terms to the claim in the previous proceeding. The plaintiff claimed in what appears to be a prayer for relief in the Statement of Claim the following, which echoed the relief sought in the previous proceeding:

> "For lost my clinic:
>
> i. To lose my clinic or build another new one clinic cost: $100,000.00
>
> ii. To lose all my loyal patients. $540,000.00
>
> iii. To lose a business chance that includes not buying a house yet but house prices more appreciated now. $100,000.00
>
> iv. To 5 years always need to move my residency cost. $100,000.00
>
> v. For 5 years I lost my clinic income as: 1800 days X $500 (this is the average income for owner for Chinese medical clinic) = $900,000.00

vi. Make my health come down and treatment fees, etc 1800 days X $200 = $360,000.00. Farther treatment fees $360,000.00

vii. To the 5 years farther my medical career lost (my qualification is can raning 5 clinic business in some time, if no the Police interferes to me, one year late I can ran another 4 clinic), so, it is lost will be: 1440 days (4 years) x $500 x 4 (another clinic) = $2,880,000.00

Total $5,250,000.00

For damage to my publishing business:

i. The new book sell to world in 2009: $59/ copy x 300,000.00 copy = $17,700,000.00

ii. The book shoot and sell become movies of income: $2,500,000.00

iii. The book shoot and sell become TV of income: $2,500,000.00

Total $22,700,000.00

All my business lost in 5 years Total: $27,950,000.00

iv. Andrew Petrou should compensate me 20% =$5,590,000.00

v. The Second Defendant should compensate me 50% =$13,975,000.00

vi. The third Defendant should compensate me 30% =$8,385,000.00

(Here, the Queensland police service are at most fault duty, it is the whole my trouble make, so should charge 50%, this is reasonable.)"

[7] The second defendant forwarded a letter to the plaintiff on 30 March 2010 pursuant to Rule 444 of the *Uniform Civil Procedure Rules* 1999 ("UCPR"). It complained that the statement of claim was deficient and that it did not disclose a cause of action or comply with the pleading requirements under the UCPR. The letter set out the grounds of complaints and asked for a reply by close of business on 6 April 2010.

[8] The plaintiff filed an application on 6 April 2010 which it seems was for a speedy trial. The second defendant filed a Notice of Intention to Defend and Defence in this proceeding on 9 April 2010. The plaintiff also filed another application for speedy trial on 15 April 2011. On 16 April 2010, the second defendant filed an application returnable on 23 April 2010 for the proceeding to be struck out.

[9] The applications were heard by Fryberg J, who found that the provisions of PIPA and the pre-Court procedures specified therein, applied to at least some of the plaintiff's claims, that were for personal injuries. His Honour stated:

> "Ms Lu claims that Mr Petrou has done many improper acts against her for three years to break her business ad that the Queensland Police and the Federal Police have joined in what she describes as false activities against her. She is legally unrepresented and her command of English is no better than limited. She has had the benefit of an interpreter during today's proceedings.
>
> The statement of claim that accompanied the claim is a long and rambling document setting out a series of allegations in historical form against Mr Petrou but it is in a form which, like the claim itself, completely fails to comply with the *Uniformed Civil Procedure Rules*. That is one of the reasons why the second respondent, the State of Queensland, has applied to have the proceeding struck out or, in the alternative, to have the statement of claim struck out.
>
> Another basis for that application by the State of Queensland is that much of the claim, although it concedes not all, refers to the effect which Mr Petrou's conduct has had on Ms Lu. She says, for example in para 23, that she went to the hospital many times and another doctor as she suffered huge mental distress and has taken lots of drugs. She says that her business has fallen on hard times in part apparently because of that fact. She has not complied with the provisions of the *Personal Injuries Proceedings Act* and to the extent that the claim involves a claim for personal injuries it is clear that she must do so. …
> She seeks to justify the present proceedings by submitting that the claim is for what she calls 'public injury', not 'personal injury'.
>
> While it is true that some of the claims which she makes are not personal injuries, it is clear that some of them are. I accept the submission that to the extent the claim is for personal injuries, it cannot be sustained."

[10] His Honour found that the major difficulty however was that the claim and statement of claim did not comply with the rules of Court. They did not set out in a brief and coherent fashion with sufficient particularity what the plaintiff's claim was. The cause of action, if there was one, was not apparent on the face of the documents. His Honour concluded that the statement of claim was embarrassing and would prejudice a proper trial of the action.

[11] His Honour found that, in respect of the plaintiff's application to have the matter set down for trial, since pleadings had only just closed and no disclosure had taken place, it would not be granted in any event.

[12] His Honour dismissed the plaintiff's application, and ordered that the statement of claim be struck out, with leave granted to amend the claim and replead on or before 14 May 2010, in default of which, the claim be struck out. In taking this course, rather than striking out the whole proceeding, His Honour stated:

> "The only question has troubled my mind about this matter is whether I should strike out only the statement of claim or the whole of the proceedings. Because part of the proceeding on its face appears not to intend to relate to personal injuries, it is possible that a lawyer might be able to draft a statement of claim which would comply with the rules. It seems to me that this being the first time a statement of claim by Ms Lu has been attacked, I ought to allow the action to stand while striking out the statement of claim. That will give Ms Lu the opportunity to replead the matter with a fresh statement of claim if she is able to do so or if she engages the services of a lawyer to do so."

[13] It may be that Fryberg J was not aware of the background relating to the previous proceeding where a similar claim and statement of claim were struck out by consent. In any event, in granting leave to amend, His Honour emphasised:

> "It should be clear to her, however, that not only will she have to obtain a properly drafted statement of claim, she will also have to amend the claim so that it complies with the rules. She deserves one more chance to do that if she is able."

[14] On 13 May 2010, pursuant to the leave granted by Fryberg J, the plaintiff filed an Amended Claim and Amended Statement of Claim. With annexures, the document was many hundreds of pages long.

[15] On 24 May 2010, the plaintiff filed an application for a speedy trial by jury returnable on 15 June 2010. On 10 June 2010, the second defendant filed a Notice of Intention to Defend and Defence and also requested further and better particulars of the Amended Statement of Claim. On 15 June 2010, the plaintiff served the second defendant with a Request for Trial Date. The plaintiff's application for speedy trial was opposed by the second defendant. On 15 June 2010, P Lyons J dismissed the application with costs.

[16] Requests for Further and Better Particulars were made and these were provided in two documents in the form of Replies dated 8 July 2010. There was also a further Request for Trial Date sought by the plaintiff dated 26 July 2011. On 29 July 2010, the second defendant declined to sign the Request for Trial on the basis the proceeding was not ready for trial.

[17] Affidavit material filed before the court by the second defendant deposed to a phone call that was made to the Queensland Police Service Solicitor on 30 August 2010 by a female caller who identified herself as Lucy Lu. The caller asked to speak to "that bitch" referring to the Christian name of a

legal officer of the Queensland Police Service Solicitor having carriage of the proceeding. Not all that was said was able to be clearly understood, but the following words were recorded, "kill her whole family and she will die and she will go … because she is a terrible bitch."

[18] The plaintiff filed and served a Further Amended Statement of Claim on 28 September 2010 and an application to dispense with the defendants' signature on a request for trial date. That application was heard on 6 October 2010 by Mullins J who dismissed it.

[19] On 15 October 2010, Mullins J heard applications filed by the first, second and third defendants to strike out the proceeding. Mullins J ordered that the proceeding against the defendants be struck out for non-compliance with the pre-court procedures of PIPA and as an abuse of the process of the Court and made costs orders against the plaintiff. In making those orders, Mullins J stated:

> "The Plaintiff, Ms Lu, is self-represented. She is a Mandarin speaker and her English is not clear. She had an interpreter to assist her. She has however been involved in preparing the numerous documents that are on this file and although her spoken English is hesitant and sometimes difficult to understand and some of her written English is also not always clear and as she says herself, "bad writing", I have formed the view on the basis of the submissions that I have heard today from Ms Lu personally and on 6 October 2010, that Ms Lu is a very shrewd person and although a litigant in person she understands very well the issues that are before the Court, both those that have been placed before the Court in her claim and the arguments that are raised against her."

[20] After outlining some of the background to the proceeding, Her Honour made the following observations about the plaintiff's claim:

> "I have gleaned in general terms that there were some sort of dealings between the plaintiff and the first defendant in 2007 or so and that there then followed domestic violence proceedings in the Magistrates Court involving both the plaintiff and the first defendant and that this somehow led to the involvement of the police and, it seems, both the State police and the Federal police. The plaintiff's claims against the first, second and third defendants have their genesis in this history."

[21] Her Honour outlined the difficulties with the plaintiff's pleading, stating:

> "What I do not understand and cannot make sense of from the further amended statement of claim is the technical causes of action that the plaintiff is pursuing against each of the first, second and third defendants. Although the plaintiff complains about their conduct and gives a description of their conduct and refers to improper dealings and claims that

she lost her businesses and claims the amounts of money that she is claiming, it is not apparent to me as to the legal relationships and duties that were breached that give rise to the claims.

Of particular relevance to the applications to strike out the claims is the fact that in the material recited in the statement of claim are numerous references to the mental distress and medical conditions that have been caused to the plaintiff by the breaches of duties by the first, second and third defendants.

For example, paragraph 3 of the further amended statement of claim states 'as engaged in a deliberate and malicious pursuit by the first defendant with both the second and third defendants continuously breaching their duties the plaintiff has suffered severe mental stress. It also affected the plaintiff's health and caused medical problems to her.'

That allegation is followed after some subparagraphs by paragraph 4 of the further amended statement of claims that suggests that the alleged improper acts of the defendants interfered with the plaintiff's legal right to conduct her business, but they also led the plaintiff to suffer from mental distress and medical problems and it is implicit that the mental distress and medical problems of the plaintiff in the way the pleading is put together contributed to the business losses which the plaintiff has suffered or has said she has suffered.

When I put to the plaintiff during the course of submissions that she was claiming her loss of business as a result of the personal injuries that she has alleged she suffered as a result of the defendants' conduct, the plaintiff responded that it was her fault and her 'bad writing' that had resulted in her referring to personal injuries and that it was in fact the losses of business that preceded the personal injuries that were suffered by her. I refer to this as one of the indications of the shrewdness that I detected in Ms Lu's presentation of her arguments today.

Both the second and third defendants analysed the further amended statement of claim and pointed to the numerous references to the personal injuries that the plaintiff claims that she suffered as a result of the conduct of the first, second and third defendants. As I have said, I cannot work out what the causes of action are, but a fair reading of the further amended statement of claim leaves one only with the conclusion that part of the plaintiff's claims are for the personal injury that she alleges that she has suffered from the acts of the defendants.

> Apart from the fundamental failure of the plaintiff to make any attempt to comply with the pre-Court procedures of PIPA, the statement of claim is also a document that does not conform in any real way with the requirements of a pleading in this Court. It would be wrong to allow this proceeding to continue with the wild allegations that are made by the plaintiff without properly attempting to put them in a form which fairly would enable a defendant to know the case the defendant has to answer and to respond to them.
>
> It is not the purpose of the justice system to allow a plaintiff in the position of Ms Lu to rely on the fact that she is self-represented and not a native English speaker to leave on as an existing action claims that are embarrassing and not able to be properly taken to trial in this Court. In view of the history of this proceeding in conjunction with proceeding 12700 of 2009, this proceeding must be characterised as an abuse of process of the Court."

[22] On 18 October 2010, the plaintiff filed an application to set aside the order of Mullins J of 15 October. That application was heard on 25 October 2010 by Daubney J, who dismissed the application and with an order that the plaintiff pay the defendants' costs on the indemnity basis. His Honour also refused leave to issue a proceeding notwithstanding non-compliance with PIPA. His Honour remarked:

> "This matter has a significant chequered history marked by the plaintiff's proceeding being dismissed or struck out by judges of the court and this plaintiff then improperly and impermissibly seeking to re-agitate those decisions after they have been made. … The application is and always was fundamentally misconceived. The proceeding was completely disposed of by the orders of Justice Mullins on 15 October 2010. The parties have been brought back to the court today and have thereby incurred further legal expenses for no good reason and no proper basis."

Proceeding No 1163/10

[23] On 25 October 2010, the plaintiff filed a fresh Claim and Statement of Claim in the present proceeding.

[24] The affidavit material deposed to by the legal officer having carriage of the matter for the second defendant receiving two emails from the plaintiff's email address which contained a hyperlink to a website purporting to be the website of the plaintiff. The legal officer in question deposed to clicking on the link and reading, amongst other things, what was in effect a reward posted for her body and those of family members. The legal officer reported the matter to the Queensland Police Service Solicitor. The police were informed and the plaintiff was charged with stalking, a charge in

respect of which bail was provided on conditions that included a requirement that the plaintiff obtain psychiatric treatment.

[25] On 4 January 2011, Michael Prowse of the Crown Law Office, who took over the conduct of the matter for the second defendant, wrote a letter to the plaintiff in which he set out the chronology of what had occurred, including with respect to proceeding 2538/10. The letter complained that the plaintiff had not complied with PIPA and also raised other issues. The plaintiff was invited to withdraw the proceeding against the second defendant and it was suggested that she obtain legal advice. The letter also included the transcript of the decision of Mullins J on 15 October 2010 and the order of Daubney J.

[26] The plaintiff did not withdraw the claim. Instead, the plaintiff sought to file a notice purporting to be pursuant to PIPA and, under cover of letter dated 11 January 2011, forwarded to Mr Prowse a notice which purported to be a PIPA notice in the form of Form 1.

[27] The defendants have filed applications seeking, inter alia, orders that the action be struck out and orders to protect them against further similar proceedings being brought by the plaintiff.

[28] By its applications filed on 14 and 21 February 2011, the third defendant sought a range of orders, some in the alternative as follows:

1. Summary judgment pursuant to Rule 293 UCPR;
2. Under Rule 389A(3)(b) UCPR, the plaintiff be restrained from starting a similar proceeding in the Court against the third defendant without leave of the Court;
3. Under Rule 389A(4) of the UCPR, the plaintiff be restrained from starting a similar proceeding in another court without leave of the court.
4. Under the inherent jurisdiction of the Court the plaintiff be restrained from starting a similar proceeding in the Court against the third defendant without the leave of the Court;
5. The court declare that the plaintiff is a person who has instituted and conducted vexatious proceedings in Australia pursuant to section 6 of the *Vexatious Proceedings Act* 2005;
6. That the proceedings be stayed pursuant to section 6(2)(a) of the *Vexatious Proceedings Act* 2005;
7. That the plaintiff be prohibited from instituting any proceeding in a Court or Tribunal of the State of Queensland without prior leave of a Judge of the Supreme Court of Queensland pursuant to Part 3 of the *Vexatious Proceedings Act* 2005.
8. Alternatively, the plaintiff provide security for the third defendant's costs up to and including the end of the first day of trial in the proceeding in the sum of $50,000 pursuant to Rule 671(a) of the UCPR.
9. Further, in the alternative that the plaintiff's Statement of Claim as against the third defendant be struck out pursuant to Rule 171 of the UCPR.

[29] The first and second defendants joined the third defendant in seeking those orders. Additionally, the second defendant seeks an order that the action be struck out for failure to comply with the pre-court procedures under PIPA and as an abuse of the process of the Court. In the alternative, it also sought an order that the statement of claim be struck out as failing to comply with the UCPR, in particular rule 171.

[30] At the hearing of this application, the plaintiff served the following documents which include cross-applications. In the absence of objection, leave was granted to the plaintiff to read and file the following documents, all dated 25 February 2011:

1. A request for trial date;
2. A second request for trial date;
3. A request for subpoenas directed to:
   (a) "Bob Atkinson (the Commissioner of the Queensland Police Service)";
   (b) "Tony Negus (the Commissioner of the Australian Federal Police) … to give production and evidence";
   (c) "Wynnum Police Station … to give production and produce evidence";
   (d) "Anti-Discrimination Commission Queensland … to give production and produce evidence";
   (e) "Magistrate Court of Brisbane … to give production";
   (f) "five Queensland Police Services members … to give production and evidence";
   (g) "five Australian Federal Police members … to give production and evidence";
   (h) "six people, address will offer to Registrar after received order from court. Issue: to give evidence";
4. An application for orders:
   "1. To investigate of committed perjury to court in his defend and another crime act in this case of the First Defendant, and the court give an order that charge of crime of the First Defendant.
   2. To investigate of committed perjury to court in their affidavit to denied Police ID of members of AFP: Kevin Hoiberg, Henry Taijard, Robert Smith, Justin McCarthy and Patrick David Law, and the court give an order that charge of crime of these persons of third Defendant.";
5. An application seeking summary judgement against the first, second and third defendants;
6. An application seeking an order fixing a date for or dispensing with a Compulsory Conference.

[31] At the hearing on 28 February 2011, the plaintiff sought and was given leave to read and file a further affidavit aimed as showing that "some police try to cover up their crime and control the law".

[32] The plaintiff additionally sought to amend the statement of claim in accordance with a document also provided to the parties on 25 February 2011. That amended pleading includes a claim for stalking against the first

defendant, which the defendants submitted only serves to confirm the vexatious and abusive nature of the plaintiff's actions. In the prayer for relief, the plaintiff claims:

"1. Damages to the Plaintiff's Personal Injuries including past Medical and Sundry Expenses; Future Medical and Sundry Expenses; compensation in General Damages from the First, Second and Third Defendants false assault and trespass.

2. Damages to the Plaintiff's clinic ruined by the First, Second and Third Defendants whom took advantage of the plaintiff via many improper acts, interfering her legal rights to conduct her business and cause her medical problem, which lead to the Plaintiff's financial loss (or assessment by Court appropriate):
   (i) of the amount of $17,500.00 per month from September 2007 to August 2008,
   (ii) of the amount of $25,000.00 per month from September 2008 to December 2008,
   (iii) of the amount of $125,000.00 per month from 2009 to the judgement date, and
   (iv) of the amount of $830,000.00 in total by missing the chance of operating another new clinic, etc.

3. Damages to the Plaintiff's publishing business from deliberate and malicious pursuit by the First defendant, with both the Second and Third Defendants continuously breaching their statutory duties, which lead to the Plaintiff's financial loss (or assessment by Court appropriate):
   (i) of the amount of $1,770,000.00 per month from March 2009 to December 2009 by failing to sell the new book worldwide,
   (ii) of the amount of $2,500,000.00 by failing to sell the copyright of the book to a movie maker in 2009,
   (iii) of the amount of $2,500,000.00 by failing to sell the copyright of the book to a TV drama maker in 2009,
   (iv) of the amount of $160,008.00 per month from January 2010 to the judgement day by failing to sell the book worldwide.

4. Damages to the plaintiff's health make her future income loss which the Court deems appropriate.

5. Damages to the plaintiff's other Special aspects as her cannot make the natural emotion life which the Court deems appropriate.

6. Damages on both compensatory aggravated and exemplary by the Defendants tried to cover the fact of the case.

7. Interest pursuant to Personal Injuries Proceedings Act 2002 of the Court deems appropriate."

[33] The claim seeks substantially similar relief to that sought in the previous proceedings. Moreover, the claim, in so far as it relates to the third defendant, concerns allegations that four named individuals were members of the Australian Federal Police and used the powers invested in them by the position to cause the plaintiff harm. Affidavit material from each of the named individuals deposed to their never having been members of the Australian Federal Police. The material also indicated that they had been subjected on the plaintiff's website to threats and rewards for their bodies.

Consideration of submissions

PIPA

[34] The defendants submitted that, since the present claim, as far as can be discerned, is one for damages for a psychiatric or psychological condition, PIPA applies and requires the giving of a notice prior to commencing proceedings[1]. No notice was given pursuant to PIPA before the proceeding was commenced, nor were the pre-court procedures under PIPA complied with. Section 43(1) of PIPA allows a court to give leave to commence a proceeding in the case of urgency despite non-compliance, but that did not occur here. It was submitted that since no leave pursuant to s 43 and s 18 of PIPA was obtained prior to the commencement of proceedings, the proceedings against the defendants were incompetent and the action should be struck out.[2]

[35] I consider that the defendants are correct in their submissions concerning the consequences of non-compliance with the requirements of PIPA. It seems from the material filed by the plaintiff, however, that she disputes the application of PIPA to the entirety of her claim for damages. But even if the plaintiff's contention was correct, it remains, in my view, for the reasons mentioned below, that the claim should also be struck out or permanently stayed pursuant to the inherent jurisdiction of the court as an abuse of process.

Rule 171 UCPR

[36] I note that the Second Defendant sought, in the alternative, to have the plaintiff's pleading struck out as frivolous, vexatious or an abuse of a process of the court pursuant to r 171 of the UCPR. Pleadings which do not identify a cause of action or fail to identify the legal liability against which the responding party must plead may also be "embarrassing" and be struck out under either this rule, or the likely prejudice of fair trial of the proceedings[3]. I share the same concerns about the present claim and statement of claim that were expressed by Fryberg J and Mullins J in respect of the pleadings in the previous proceeding (No. 2538/10). I agree with the submission made by the defendants that neither the Statement of Claim, nor the proposed amended pleading, formulates any sensible cause

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1 See s9(1) PIPA.

2 *Holmes v Adnought Sheet Metal Fabrications Pty Ltd & Queensland Corrective Services Commission* [2003] QSC 321, [25[;*State of Queensland v Coffey* [2005] QSC 212.

3 *UI International Pty Ltd v Interworks Architects Pty Ltd & Ors* [2007] QSC 096.

of action, and that they are incoherent and embarrassing and as such are liable to be struck out as frivolous, vexatious and an abuse of the process of the court pursuant to r 171 of the UCPR. However, as I have already stated, in my view, not only is the statement of claim deficient and an abuse of process, but the entire proceeding should be stayed or struck out as an abuse of process.

Inherent Jurisdiction

[37] Australian superior courts have inherent jurisdiction to strike out or stay proceedings which are an abuse of process: *Williams v Spautz*.[4] Keane JA in *von Riesefer v Permanent Trustee Co Pty Ltd* [5] made the following observations about the Court's inherent jurisdiction:

> "It has long been established that a court has the power to ensure that its own processes are not abused. The basic justification for this aspect of a court's inherent jurisdiction was explained by Baron Alderson in *Cocker v Tempest* where his Lordship said:
>
> > 'The power of each Court over its own process is unlimited; it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter for the most careful discretion.' " (citation omitted)

[38] In *Walton v Gardiner*[6] the inherent jurisdiction was described as an:

> "inherent power to prevent misuse of its procedure which would be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people."

[39] In submitting that the proceeding should be struck out as vexatious and an abuse of the process of the Court, reference was made to *O'Shea v Cameron*[7] where it was said:

> "It is also necessary to decide what makes legal proceedings vexatious. Although there are sometimes statutory indications, the broad test potentially concerns such factors as the legitimacy or otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the court's practices, procedures and rulings, persistent attempts to use the court's processes to circumvent its decisions or other abuse of process, the wastage of public resources, and funds, and the harassment of those who are

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4 (1992) 174 CLR 509, 518 – 520.
5 [2005] 1 Qd R 681, 685.
6 (1993) 177 CLR 378, 396.
7 *O'Shea v Cameron* [1996] QCA 037.

> the subject of the litigation which lacks reasonable basis: see, for example, *Attorney-General (N.S.W.) v. Wentworth* (1988) 14 N.S.W.L.R 481; *Jones v. Skyring* (1992) 66 A.L.J.R. 810; *Jones v. Cusack* (1992) 66 A.L.J.R. 815; and *Attorney- General (N.S.W.) v. West* (N.S.W. Common Law Division No. 16208 of 1992, 19 November 1992)."

[40] The principles with respect to abuse of process are discussed in *McDowall v Reynolds*[8] as follows:

> "In *Ridgeway v The Queen* Gaudron J said:-
>
> > 'The powers to prevent an abuse of process have traditionally been seen as including a power to stay proceedings instituted for an improper purpose, as well as proceedings that are 'frivolous, vexatious or oppressive'. … Abuse of process cannot be restricted to 'defined and closed categories' because notions of justice and injustice, as well as other considerations that bear on public confidence in the administration of justice, must reflect contemporary values and, as well, take account the circumstances of the case. That is not to say that the concept of 'abuse of process' is at large or, indeed, without meaning. As already indicated, it extends to proceedings that are instituted for an improper purpose and it is clear that it extends to proceedings that are 'seriously and unfairly burdensome, prejudicial or damaging' or 'productive of serious and unjustified trouble and harassment'.'
>
> In *Rogers v The Queen* McHugh J said:
>
> > 'Although the categories of abuse of procedure remain open, abuses of procedure usually fall into one of three categories: (1) the court's procedures are invoked for an illegitimate purpose; (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or (3) the use of the court's procedures would bring the administration of justice into disrepute.' " (citations omitted)

[41] In my view, the proceeding should be stayed or struck out as an abuse of process pursuant to the inherent jurisdiction of the court. The chronology outlined above, commencing with the Claim filed on 12 November 2009 in proceeding number 12700/09, the various orders made against the plaintiff in that proceeding and proceeding number 2538/10, including the orders striking out the proceeding by Mullins J and the orders dismissing applications to set aside orders of the Court, points to a course of conduct which is vexatious and oppressive, even without the conduct outlined in the

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8 *McDowall v Reynolds* [2006] QSC 414, [23].

affidavit material, relating to the emailed hyperlink, leading to the plaintiff being charged with stalking.

[42] I am satisfied that the plaintiff, in disregard of the Court's rules, procedure and in the face of orders made by the Court, has persistently attempted to use the court's process to harass those who are the subject of the litigation, in a manner which is oppressive and persistent. The conduct of the plaintiff in repeatedly attempting to claim similar relief in this action, as was unsuccessfully sought in the previous proceedings, can only be seen to be vexatious and an abuse of process.

[43] As was discussed in *von Risefer v Permanent Trustee Co Pty Ltd*,[9] this Court has inherent power to bring this abuse of process to an end in the exercise of its inherent jurisdiction to prevent its processes being used as a means of vexation. Indeed, as Keane JA noted in *von Risefer*, s 58 of the *Constitution of Queensland* 2001 (Qld), may be seen as providing the foundation of a statutory jurisdiction for the Court that mirrors the Court's inherent jurisdiction. His Honour referred to a number of authorities, including *Jackson v Sterling Industries Ltd*, which suggest that it is at least arguable that the Supreme Court of Queensland need not make separate resort to the inherent jurisdiction to find a power to prevent abuse of its processes.

[44] Moreover, as Keane JA observed in *von Risefer,* the Court's jurisdiction may be exercised more broadly. His Honour considered that the power of the Court in the circumstances of that case extended: [10]

> "…to protect the defendants against any further attempt by the plaintiffs to relitigate the same complaints in fresh proceedings as an aspect of the inherent jurisdiction … or, possibly, in reliance on s 58 of the *Constitution of Queensland* 2001 (Qld). It is, no doubt, a power to be exercised with the utmost caution; but this case affords a clear example of the kind of case in which it should be exercised to protect parties against whom baseless allegations of unlawful conduct have repeatedly been made from the expense, inconvenience and hurt involved in the further repetition of those allegations."

[45] In that case, in addition to making an order restraining the plaintiffs from bringing any further application in the proceeding before the court, an order was made restraining the plaintiffs:

> "from taking any further steps, including the issuing of any new proceedings in any Queensland court against the defendants arising out of, or concerning the proceeding before the Court, without the prior leave of the Court."

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9 [2005] 1 Qd R 681, [11].

10 [2005] 1 Qd R 681, [25].

Rule 389A UCPR

[46] Since the decision in *von Risefer*, there is another source of power which permits the Court to order that a party not bring further similar proceedings. Rule 389A UCPR provides that an order may be made in certain circumstances preventing a party to a proceeding from initiating similar proceedings against another party to an existing proceeding. This provides a source of power to make the orders sought by the defendants, which is in addition to that arising from the Court's inherent jurisdiction, as r 389A does not impinge on the Court's inherent power (r 389A(9)).

[47] Rule 389A(3)(b) UCPR provides that the court may order that a "relevant party" not start a "similar" proceeding in the court against a party to the existing proceeding, or against a party to the existing proceeding and another person without the leave of the court. Rule 389A(4) empowers the Court additionally to order that the relevant party not start a similar proceeding in another court against a party to the existing proceeding without the leave of the court. Rule 389A(10) states that, "similar proceedings" in relation to an existing proceeding, means a proceeding in which:

> "(a) the relief claimed is the same or substantially the same as the relief claimed in the existing proceeding; or
> (b) the relief claimed arises out of, or concerns, the same or substantially the same matters as those alleged in the existing proceeding."

[48] Rule 389A does not require a determination that the "relevant party" is a vexatious litigant. Rather, it requires that the court find that the plaintiff has made more than one application "in relation to the existing proceeding" that is frivolous, vexatious or an abuse of process.

[49] The question that arises is whether the plaintiff has made more than one application in relation to the proceeding that is frivolous, vexatious or an abuse of process. Counsel for the third defendant accepted that until the plaintiff filed and read the additional applications dated 25 February 2011, the plaintiff had not made one or more applications in the existing proceeding. No applications had previously been made within the existing proceeding because the plaintiff's previous two proceedings had been struck out and the multiple previous applications made by the plaintiff were made in those proceedings. However, the third defendant submitted that the further applications brought in the present proceedings on 23 February 2011, pursuant to the leave sought on that date, enlivened the Court's jurisdiction pursuant to r 389A of the *UCPR*.

[50] The meaning of "frivolous, vexatious and abuse of process" is not defined in the UCPR. In *Mbuzi v Hall*[11], Applegarth J in considering the meaning to be given to those words, adopted the approach taken in *Mudie v Gainriver Pty Ltd (No 2)*[12] that the words must be given their 'ordinary

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11 [2010] QSC 359.
12 [2003] 2 Qd R 271.

meaning'. In *Mudie* McMurdo P and Atkinson J noted[13] that in the Macquarie Dictionary "frivolous" was defined as:

> "of little or no weight, worth or importance; not worthy of serious notice: a frivolous objection. 2. Characterised by lack of seriousness or sense: frivolous conduct" and "vexatious" was defined as "1. Causing vexation; vexing; annoying …"

[51] Their Honours observed[14]:

> "Unquestionably, something much more than lack of success needs to be shown before a party's proceedings are frivolous or vexatious. Although in a different context, some assistance can be gained from the discussion of the meaning of these words in *Oceanic Sun Line Special Shipping Company Inc v Fay* where Deane J states that 'oppressive' means seriously and unfairly burdensome, prejudicial or damaging and 'vexatious' means productive of serious and unjustified trouble and harassment, meanings apparently approved by Mason C.J. Deane, Dawson and Gaudron JJ in *Voth v Manildra Flour Mills Pty Ltd*. Those meanings are apposite here." (footnotes omitted)

Williams JA was also of the view that the words should be given their ordinary meaning, and followed authority that "vexatious should be understood as meaning productive of serious and unjustified trouble and harassment".

[52] In *Mbuzi v Hall*[15], Applegarth J, adopting the meaning of the terms "frivolous, vexatious and abuse of process" favoured in *Mudie* concluded that the essential issue in determining whether r 389A applies is whether the applicant has brought more than one application in relation to the proceeding "that has been productive of serious and unjustified trouble and harassment." I accept that the approach take by Applegarth J is correct.

[53] I am satisfied that the applicant has now brought more than one application in relation to this proceeding, which has been productive of serious and unjustified trouble and harassment, and which can be properly characterized as frivolous, vexatious and an abuse of process, so that an order pursuant to r 389A(3)(b) may be made precluding the plaintiff from starting a similar proceeding in this Court without the leave of the Court.

[54] The application for contempt orders, speedy trial and summary judgment are not only misconceived, but given the history of this matter, demonstrate a determination to continue to engage in oppressive conduct that has been productive of serious and unjustified trouble and harassment.

[55] It is appropriate that orders be made pursuant to r 389A(3)(b) and also pursuant to r 389A(4) UCPR so that proceedings may not be commenced in another court without the leave of this Court. Those orders are made in

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13 [2003] 2 Qd R 271, [35].
14 [2003] 2 Qd R 271, [36].
15 [2010] QSC 359.

addition to an order pursuant to the inherent jurisdiction permanently staying the proceeding as an abuse of process.

Vexatious Proceedings Act 2005

[56] At this stage I do not consider that orders under the *Vexatious Proceedings Act 2005* are required. The parties are sufficiently protected by the orders I have outlined and intend to make. A matter raised in the course of submissions was the situation of the plaintiff giving a notice under PIPA. But given that the plaintiff is restrained from instituting similar proceedings, any PIPA notice given as a precursor to the bringing of proceedings is rendered nugatory.

Orders

[57] I order that the action be permanently stayed pursuant to the Court's inherent jurisdiction as an abuse of process.

[58] Pursuant to rules 389A(3)(b) and (4) of the *Uniform Civil Procedure Rules* 1999 (Qld), I order that the plaintiff not start a similar proceeding to proceeding 11613/10 in this Court or any other Court against the first, second or third defendants in proceeding 11613/10 without the leave of the Court.

[59] I shall hear submissions as to costs.