IN THE FEDERAL COURT OF AUSTRALIA (FCA)
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION

No: VID969/2010

NOTICE OF FILING

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Dated: 13/11/2012

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Second report of Professor Gordon

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29 October 2012

Preliminaries

1. This report addresses questions put to me by Ms Elyse Hilton of Arnold Bloch Leibler, Lawyers and Advisers, in an email dated 11 October 2012. The questions relate to the following Proceeding: **Daniel Haile-Michael & Ors v Nick Konstantinides & Ors, Federal Court of Australia Proceeding No. VID 969 of 2010.**

2. I have previously provided a report in relation to the Proceeding and this is a second report dealing with some further questions. The relevant background context and information for this report, such as my original letter of instructions and my own background and qualifications, are dealt with in that first report. In this report I use the same terms as those in the first report and assume that these terms are familiar to someone reading this second report. I have not been provided with any new information for the purposes of this second report and the list of documents and information provided to me is in my first report.

3. I was provided with guidelines for expert witnesses providing evidence in the Federal Court. I have read, understood and complied with these guidelines in the preparation of my report.

Addressing the questions

4. I turn now to addressing the questions in the email, dated 11 October 2012. I was requested to conduct further statistical analysis on the following variables in the relevant Excel files from Victoria Police.

5. The first requested analysis is: *"File 2: Distribution of 'custody reasons' by individual ID numbers for African/ Middle Eastern (LEAP) males and males of 'other' ethnic appearance, and statistical significance."*

6. The overall distribution of custody reasons from file 2 was given as Table 3 in the first report. The distribution of custody reason by whether or not the male associated with the custody reason was African/Middle Eastern (LEAP) is given in Table 1 below. There are some important aspects of Table 1 that require explanation, given in the paragraphs that follow.

Table 1: Custody reason (file 2) by African/Middle Eastern (LEAP) and Other.

CUSTODY REASON		Ethnicity (2 groups)	African/Middle Eastern (LEAP)	Total
		Other		
ARREST – DRUNK	Frequency	76	62	138
	%	7.1%	13.7%	9.1%
ARREST – INTERVIEW	Frequency	691	285	976
	%	64.6%	62.8%	64.0%
ARREST – WARRANT	Frequency	192	57	249
	%	.2	.1	16.3%
BAIL REVOKED	Frequency	3	5	8
	%	0.3%	1.1%	0.5%
FORENSIC PROCEDURE	Frequency	3	1	4
	%	0.3%	0.2%	0.3%
INFIRM/LOST/SAFE KEEPING	Frequency	6	0	6
	%	0.6%	0.0%	0.4%
MENTAL HEALTH ACT CUSTODY	Frequency	8	0	8
	%	0.7%	0.0%	0.5%
NON ARREST INTERVIEW	Frequency	40	21	61
	%	3.7%	4.6%	4.0%
OTHER	Frequency	39	20	59
	%	3.6%	4.4%	3.9%
S.464 INTERVIEW	Frequency	5	2	7
	%	0.5%	0.4%	0.5%
S.8AC DIRECTION POWER-FV	Frequency	3	0	3
	%	0.3%	0.0%	0.2%
S.8AD DETENTION POWER-FV	Frequency	3	1	4
	%	0.3%	0.2%	0.3%
SEARCH PERSON	Frequency	1	0	1
	%	0.1%	0.0%	0.1%
TOTAL	Frequency	1070	454	1524
	%	100.0%	100.0%	100.0%

7. It may be noted that there are 1556 observations in Table 3 of the first report, but 1524 in Table 1 of this report. As the first report notes, there is a custody reason entered for every row of the file. That is, there is no missing data for this variable. On the other hand, also as noted in the first report, in file 2 there are 32 records with missing ethnic appearance, relating to 17 individuals with missing ethnic appearance. Because Table 1 above requires both variables to be non-missing, there are also 32 missing observations in this table. The small amount of missing data is not an important limitation; it is mentioned for clarity, for any reader who may compare Table 3 of the first report with Table 1 here.

8. The second issue is more important: the percentages shown here are of entries in the file, rather than of individuals. This addresses the request. There are 88

males identified as African/Middle Eastern (LEAP) in file 2; they had a total of 454 entries in the file. Of those 454 entries, 62, or 13.7%, were "ARREST – DRUNK". It is not possible on the basis of Table 1 to say among how many males these 62 "ARREST – DRUNK" custody reasons arose. They may have arisen from a small number of males, who were repeatedly recorded with a custody reason of "ARREST – DRUNK", or from 62 males, all of whom were recorded just once with a custody reason of "ARREST – DRUNK", or other possibilities between these extremes. This, of course, can be investigated, but Table 1 does not provide this information.

9. The observation in paragraph 8 has consequences for the question of statistical significance. Testing the similarity or otherwise of the distributions in Table 1 cannot be done in the usual way for a cross-classified table, because the independent units of analysis in this case are the 259 males involved, rather than the 1524 records. It is not straightforward to carry out a test of the similarity or otherwise of the distributions, for this reason. However, the percentages down the columns are not markedly different and in my opinion an appropriate statistical test would be unlikely to show a statistically significant difference between the two groups, in the distribution of custody reasons.

10. The second requested analysis is: *"File 2: Distribution of 'dispositions' by individual ID numbers for African/ Middle Eastern (LEAP) males and males of 'other' ethnic appearance, and statistical significance."*

11. The distribution of disposition by whether or not the male associated with the custody reason was African/Middle Eastern (LEAP) is given in Table 2 below.

Table 2: Disposition (file 2) by African/Middle Eastern (LEAP) and Other.

DISPOSITION		Ethnicity (2 groups)		
		Other	African/Middle Eastern (LEAP)	Total
BAIL NO CHARGE	Frequency	88	28	116
	%	8.2%	6.2%	7.6%
CAUTIONED	Frequency	80	44	124
	%	7.5%	9.7%	8.1%
CERTIFIED INVOLUNTARY PATIENT	Frequency	6	1	7
	%	0.6%	0.2%	0.5%
CHARGED & BAILED	Frequency	350	140	490
	%	32.7%	30.8%	32.2%
EXONERATED	Frequency	30	15	45
	%	2.8%	3.3%	3.0%
IN ATTENDANCE	Frequency	2	0	2
	%	0.2%	0.0%	0.1%
INSTANT SUMMONS ISSUED	Frequency	8	1	9
	%	0.7%	0.2%	0.6%
INTENT TO SUMMONS	Frequency	289	115	404
	%	27.0%	25.3%	26.5%
LEFT PENDING ENQUIRIES	Frequency	48	41	89
	%	4.5%	9.0%	5.8%
PIN ISSUED	Frequency	12	9	21
	%	1.1%	2.0%	1.4%
PROT. APPLIC/SAFE CUSTODY	Frequency	6	2	8
	%	0.6%	0.4%	0.5%
RELEASED INTO CARE	Frequency	26	4	30
	%	2.4%	0.9%	2.0%
RELEASED-BAIL C&W I/O	Frequency	10	4	14
	%	0.9%	0.9%	0.9%
REMAND BAIL GRANTED	Frequency	2	0	2
	%	0.2%	0.0%	0.1%
REMAND BAIL REFUSED	Frequency	66	32	98
	%	6.2%	7.0%	6.4%
REMAND HEARING - DIRECT TO CRT	Frequency	31	10	41
	%	2.9%	2.2%	2.7%
RET.TO CUST. W/OUT CHARGE	Frequency	7	2	9
	%	0.7%	0.4%	0.6%
RET.TO CUST. WITH CHARGE	Frequency	9	6	15
	%	0.8%	1.3%	1.0%
TOTAL	Frequency	1070	454	1524
	%	100.0%	100.0%	100.0%

12. Similar considerations to those for Table 1 apply to Table 2. There are 88 males identified as African/Middle Eastern (LEAP) in file 2; they had a total of 454 entries in the file. Of those 454 entries, 28, or 6.2%, were "BAIL – NO CHARGE". It is not possible on the basis of Table 2 to say among how many males these 28 "BAIL – NO CHARGE" dispositions arose. They may have arisen from a small number of males, who were repeatedly recorded with a custody reason of "BAIL – NO CHARGE", or from 28 males, all of whom were recorded just once with a disposition of "BAIL – NO CHARGE", or other possibilities between these extremes.

13. The percentages down the columns are not very different in general and in my opinion an appropriate statistical test would not show a statistically significant difference between the two groups, in the distribution of dispositions overall, although the difference for "LEFT PENDING ENQUIRIES" is quite marked.

14. The third requested analysis is: "File 4: An answer to the question already identified in para 135 of Professor Gordon's report."

15. I was subsequently advised in an email from Elyse Hilton dated 18 October that a response to this request was not required.

16. The fourth requested analysis is: "File 5: Distribution of all 'involvement types' by individual ID numbers for African/ Middle Eastern (LEAP) males and males of 'other' ethnic appearance, and statistical significance."

17. Table 3 shows the distribution of "INVOLVEMENT" in File 5, according to whether the male was African/Middle Easter (LEAP) or "Other". It shows a notable disparity between the percentages for the category "OFFENDER". It is important to keep in mind that these percentages cannot be directly attributed to the two ethnic categories as individuals, for reason explained above in the discussion of Table 1. However, in my first report (at paragraph 120) I noted that among the records which are "OFFENDER", the average number of offences for males in the African/Middle Eastern group was significantly lower than the average number in the "Other group".

Table 3: Involvement (file 5) by African/Middle Eastern (LEAP) and Other.

| INVOLVEMENT | | Ethnicity (2 groups) | | |
		Other	African/Middle Eastern (LEAP)	Total
ASSIST ENQUIRY	Frequency	56	43	99
	%	2.8%	6.4%	3.7%
CAUTION	Frequency	108	59	167
	%	5.5%	8.8%	6.3%
FIRST CALLER	Frequency	3	0	3
	%	0.2%	0.0%	0.1%
INFRINGEMENT	Frequency	2	2	4
	%	0.1%	0.3%	0.2%
INTENT TO SUMMONS	Frequency	185	118	303
	%	9.4%	17.5%	11.5%
NAME WHEREABOUTS	Frequency	170	60	230
	%	8.6%	8.9%	8.7%
OFFENDER	Frequency	1445	392	1837
	%	73.3%	58.2%	69.4%
OFFICIAL WARNING	Frequency	2	0	2
	%	0.1%	0.0%	0.1%
OTHER PERSON IN VICINITY	Frequency	1	0	1
	%	0.1%	0.0%	0.0%
TOTAL	Frequency	1972	674	2646
	%	100.0%	100.0%	100.0%

18. Since "OFFENDER" is by far the single largest category in Table 3, I carried out a test of whether the percentage of involvements that were "OFFENDER" was significantly different between the two groups, using a generalised linear mixed model, which properly accounts for the unit of analysis being the individual rather than the involvement. The result was that the percentage of involvements that were "OFFENDER" was lower in the African/Middle Eastern (LEAP) group than in the "Other" group. The result of this test was a P-value of 0.0003, which is strongly statistically significant. This is another perspective on the finding in my first report, mentioned above in paragraph 17.

19. I have made all the inquiries which I believe are desirable and appropriate and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.