

**IN THE SUPREME COURT OF NEW ZEALAND**

SC 49/2006

BETWEEN

**SUSAN COUCH**

Appellant

AND

**THE ATTORNEY-GENERAL**

Respondent

Hearing 11 November 2008

Coram Elias CJ  
Blanchard J  
Tipping J  
McGrath J  
Wilson J

Counsel B P Henry for the Appellant  
J C Pike for the Respondent

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**CIVIL APPEAL**

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9.00am

Elias CJ Thank you.

Henry Henry for the appellant Your Honours.

Elias CJ Yes Mr Henry, thank you.

Pike Pike for the respondent may it please the Court.

Elias CJ Yes Mr Pike, thank you. Yes, Mr Pike, I think we really need to hear first from you since you're wanting to go on and we had indicated in the judgment that we thought you might want to review that position, and your memorandum doesn't really develop the points in the light of the sort of discussion in the principal judgment.

Pike No indeed Your Honour, the proposition from the Crown was that the exemplary issue does stand apart in a sense from the main point of the judgment which was of course to say that duties of care may be

approached in a way indicated by the Court, that is that there was an arguable duty of care in the case and that if the pleadings were perfected to a point, notably that there was some movement in the description of Mr Bell as being somebody who was potentially a known or a good risk, a known risk of his potential, was pleaded firmly, and I think that was Justice Tipping's point that there then could well be a ground for a duty of care, and the Court was not entirely divided but it has different approaches on what could be the case. We have however had thought with respect that the exemplary damages point stands to one side in as much as there are fundamental difficulties that we see that this Court as a matter of legal and public policy might, not must of course, look at. And the most profound of them was in fact as to whether *Botrill v A* which was traversed to some degree at the hearing of the appeal, ought to be put back to what the Court of Appeal in New Zealand and *McLaren Motors* had said about exemplary damages, rather than leaving it as a sort of I have to say with respect a somewhat less tangible beast lying outside the idea of intentional wrongdoing or that is subjective wrongdoing that there was a half-way house at some cases in an action on the case analysis somehow cried out at *Botrill* seemed to do for the imposition or likely imposition of exemplary damages.

Elias CJ

Well that of course is the argument that you're not at all precluded from running. The concerns of this Court are first that we don't have the factual context which is always desirable in areas of developing or receding law, because on any view what you're urging on us is a departure from the current law. Secondly, we don't have any lower Court determination to assist us so we'd be dealing with this as a matter of first and last impression, and on a strike-out basis, and it occurs at least to me that one of the outcomes today might be that if you were successful we'd go ahead with a major hearing as the other one was and we might at the end of it conclude that the question of the scope of exemplary damages or the availability of exemplary damages isn't suitable for strike-out treatment. In other words come to the same sort of conclusion as on duty of care, and I suppose you could start with that and indicate really why the Crown would want to go through that.

Pike

Well the Crown doesn't want to detain either the plaintiff or the Court in a matter that might turn out to be unsatisfactory at its end. The Crown's position with respect was that the question of where exemplary damages lie really needs not much of a factual content at all. In one sense it's a pure question of law. The facts, if they were traversed at trial, might turn out to be as we probably know now that we had a Probation Officer hopelessly out of her depth; probably management that knew she was hopelessly out of her depth; a serious under-resourced facility; people who were taking training courses when they should have been on the job and so on. An accumulated collection of really administrative failures along the line. That won't help the Court or hinder it one would have thought in terms of exemplary

damage, unless the Court wanted to have before it a narrative which indicated this was so dreadful that we choose to adhere to what the Privy Council majority said in *Botrill v A*, because there must be room for that unusual case, and that's what I think is my friend's approach to all that

Elias CJ      It does arise in different circumstances though, because this is a case of a statutory obligation and while the majority in the first judgment didn't feel the need to engage with the principles that apply in those circumstances, it's touched on in my judgment, and Anderson J's judgment and it's quite substantial law, and it's really that it's in a different setting that might make some greater exploration of the facts and also some determination by the Court of Appeal in particular of assistance to us.

Pike            Yes indeed, I take the point Your Honour. Plainly, with respect, the Crown's approach, or counsel's submission if we could put it that way, has been generally one which Your Honour is speaking for yourself, Justice Anderson doesn't really find much to be said for it. The position being that working out legal propositions on the basis of pleaded facts in negligence cases isn't like conducive to a proper development of the law of negligence. The Crown or counsel's case has always been that in cases of statutory obligation for instance, there has been a body of writing relating to what is meant by proximity and whether Lord Hoffmann's approach to it in other judgments like *Stovin v Wise* which we sort of clung to is being what we saw and which obviously with respect Your Honour doesn't seem necessarily all that helpful, as being something you can look at

Elias CJ      I thought I used it. It's really how you look at these things, but my point is really that this is an area in which there have been a number of judgments of the House Of Lords and the High Court of Australia in particular in which there have been divided opinions and you are asking really to make a statement which will be wholly uninformed by context.

Pike            To an extent that's true, yes, because as I say obviously counsel's submissions are not as context-based as some of the judgments have been which rely on context.

Elias CJ      Yes.

Pike            And I appreciate in terms of most of the areas of law is to beg and borrow from Lord Steyne, context is everything.

Elias CJ      Well maybe not quite, but almost everything.

Pike            But there are issues that we've put in our memorandum as to first one which is clearly was not immediately attractive to the Court at all, as to

whether we simply here and now say that there are essentially no exemplary damages available for negligence claims at all.

Elias CJ Well I don't think the Court's got any view on that yet. That is something that would have to be addressed, and it may be that in the statutory obligation context that argument can be quite powerfully put.

Pike Yes indeed, and the other point following from that, that we thought was not fact dependent was essentially there is an ACC bar to which 319 of the Accident Prevention Rehabilitation legislation doesn't engage and that is that this is an action arising out of personal injury by

Elias CJ But why should we deal with that if that argument hasn't been addressed in the lower Courts, because that isn't one that they would have been precluded from considering on the merits?

Pike No indeed, but we touched on it but of course those Courts went their way by finding that there was no proximity that while there might have been negligence there was no arguable basis for a duty of care to be imposed. It was an issue but of course it was like exemplary damages, unnecessary for those Courts to engage on it, and they didn't, but I mean my argument with respect is simple and it may simply be that the context in which both the element of damages and negligence is to be decided are fact-specific and Courts will see them as that way and be reluctant as plainly the Court, at least in debate here, there's a clear reluctance to decide matters in a vacuum. But all we can say with respect is that there are issues that do not need more than an acceptance of the pleaded facts. The most compelling we say is why do we have exemplaries at all for negligence, and that's tangled up with the proposition that *McLaren Transport* and *Botrill* in the Court of Appeal were rightly decided, which really almost obviates the need for an analysis of negligence at all. The second point is that the Accident Compensation legislation would appear to bar this process, and my friend has been candid enough to indicate in his memorandum that this action is about getting compensatory damages for his client which of course is understandable. But they are, the Social Welfare and ACC are not sufficiently remunerative or helpful for her position, and I think we all accept that there are real difficulties with the way the legislation is structured. But his claim arises out of person injury by accident. There can be no action

Tipping J Would that involve *Donselaar* and the cases following it being overruled?

Pike No Sir I would submit not, because *Donselaar* and those cases, *Taylor & Beard* and so, sorry *Donselaar* to start with which is the starting point, was a trespass. This is negligence. So *Donselaar*, and I would say with respect there

Tipping J But it was personal injury by accident wasn't it?

Pike It was indeed. There was a certain amount of linguistic movement shall we say in the terms of what mightn't be meant by arising out of personal injury by accident, but the Court as I recall in *Donselaar*, which was an assault case, trespass, said the sting or the gravamen of the action is that actionable per se which was important, without proof of damage. Secondly, the wrong claimed for was the assault, so it wasn't based on the injury. It didn't matter presumably if you got a broken nose or worse or less. That didn't matter. What did matter was this was an assault and he is entitled to sue and get damages for the trespass, but my friend hasn't got that available to him. Indeed all of the cases on trespass can be distinguished. This is a straight out old-fashioned case, i.e, that's negligence, and therefore we are suing only because of personal injury arising out of personal injury and no other reason, and so there are essentially grave difficulties with that to which 319 of the ACC legislation is not directed. That's about suing criminals. Its textual basis doesn't allow I would have thought vicarious liability for a criminal's act. It's not that way

Tipping J Are you proposing as a fallback to limit your present extended strike-out to the ACC point as a fallback if you can't have the other two?

Pike You couldn't have the other two, it lives there

Tipping J Are you saying well at the very least this is a very pure question of law?

Pike It is a pure question of law.

Tipping J And therefore it should be entertained before trial?

Pike Yes, yes.

Tipping J Is that your position if all else fails that at least?

Pike Yes.

Tipping J Yes.

Elias CJ Without lower Court determination of the point?

Pike Yes without lower Court determination.

Blanchard J Well I can see that the ACC legislation may well bar a proceeding for any element of compensation for what has occurred, but it would seem to me that we can't possibly at this stage say that there is no possibility whatever of a damages award for outrageous behaviour either by the Probation Officer concerned – I'm not signalling that that would be the case, I'm looking at this theoretically

Pike No, I understand Sir.

Blanchard J Or for the systemic failure by the Probation Service as a whole, or individual people, but that is very heavily dependent upon what those persons knew, either individually or collectively, and what their attitude is exposed as being.

Pike Well collectively one's a problem Sir because of the proviso to s.6 of the Crown Proceedings Act. Each of them has to be liable for exemplary damages. They can't be collectively liable. Indeed there was great complaint about that I think in a recent *NZ Lawyer* article by an academic who was complaining that you cannot sue Departments. So we've got that

Elias CJ So is that another point we'd have to determine?

Pike Yes, it's a tangled up point as well with the fact that

Elias CJ Without lower Court consideration?

Pike Well the only ruling on it has been in a case called *Crispen* I think in the District Court at Napier which the President was Lord Cooke, who applied that old, very old now, *Bainbridge v Post Master General* from 1906.

Elias CJ This is all a blast from the past really isn't it?

Pike Well there are some good things in the past.

Elias CJ Tell us what

Pike That says that one civil servant cannot be vicariously liable for the acts of another. It's part of the equations that are annoying academics, that you cannot sue the Department of Corrections, which in fact is what is happening here, for a collective fault. Each has to be picked off as it were to be found fully liable as an individual in tort and for exemplary damages, found the Attorney General thereby vicariously liable. A point we don't argue despite Lord Scott's helpful *Cuddis* judgment.

Elias CJ But what would you be arguing?

Pike Simply that this is part of the difficulty of the attaching exemplary damages

Elias CJ But what would be your proposition?

Pike The proposition is that the other point would have to be, an associated point, is that each person who is in the Department of Corrections must be found to be liable in exemplary damages in his or her own right.

You cannot accumulate or get some form of conspiracy going, i.e, that they're collectively liable by dint because of that proviso to s.6.

Tipping J      The more you go on Mr Pike, the more you're persuading me that it's going to be very difficult at this stage to do justice.

Elias CJ      You see it is possible Mr Pike that we're at the intersection of private law and public law here and it seems quite odd if *Baigent* damages are available in one context and there is an absolute impediment to crown liability in another. It seems quite inconsistent and it may be that one or other has to move. But these are huge issues in the law.

Pike      Yes sorry Your Honour I hadn't finally answered Justice Blanchard's question, if indeed I have an answer, but the proposition would be Sir that in terms of whether or not one could work through and get damages for exemplaries on a negligence claim, our argument is with respect to the ACC bar, that the wrong is not actionable, so you cannot in fact have jurisdiction in the matter to look into the pleading at all by the efforts and action arising out of personal injury by accident. The Court cannot look into it or try the matter. It is statute-barred. It's a jurisdiction issue, and so you don't get to the point of saying that there was serious wrongdoing. That's a parasitic damages issue, but you can't get to the damages that it's parasitic on because there aren't any and it's more fundamental. The Court actually doesn't have jurisdiction to hear the matter at all, so it's that fundamental.

Elias CJ      Did your strike-out application raise this?

Pike      We certainly had the ACC bar

Elias CJ      It did, yes.

Tipping J      It seems to me to be your simplest self-contained point. Once we start wrapping all this other stuff in it becomes far from a strike-out.

Pike      That's right, I agree with that.

Tipping J      Do you just simply say that Parliament has in effect withdrawn any right of action arising out of personal injury, whatever the relief, that's the argument?

Pike      Well yes it is. I mean the Court would then have to say that we do not disturb, if it assumably even got close to agreeing with part of the proposition, you would not have to disturb *Donselaar*. I mean there's good reason in our submission you would want to, but because it is at least linguistically tenable, as the Courts did in those cases, to say look the action arises out of their front. If someone punches you in the nose you're not suing because you got a bloody nose, you're suing because you were affronted and assaulted, and that's a tenable

Tipping J      That's like taking it as a battery rather than as an assault. I mean that's extraordinarily refined.

Blanchard J    Well it's the refinement we actually articulated in the case about the Police dog.

Tipping J      *Wilding*.

Blanchard J    Yes.

Pike             Yes *Wilding* contains a great body of jurisprudence on the point, yes.

Elias CJ        Not we.

Tipping J      We were there sitting in a different place.

Elias CJ        Yes.

Pike             Yes, but that is the

Tipping J      That's your best point I suggest?

Pike             It's the best point.

Tipping J      Yes.

Pike             It's self-contained. It needs no facts

Elias CJ        But we don't have any judgment on it, so we would have to be first and last on that?

Pike             You would have to be first and last, yes, yes. But I can't say better than that. The rest of it I agree with the Court, there's a clear judicial reluctance. It's a fact of life in dealing with personal injury cases, to deal with them in vacuums. If the point is neat and self-contained there may be an exception. That's the only neat and self-contained point aside from the point that abolish exemplaries entirely which of course the Court

Blanchard J    What, for everything?

Pike             No sorry, for negligence.

Elias CJ        For negligence, for all negligence.

Pike             That's right. I mean 319 now is problematic and Your Honour observed that in the last hearing that really Parliament has said there can be exemplary, or locked in exemplary damages against those who commit crimes, and the Court felt reluctant now to move on that and I agree.



Elias CJ Am I right in thinking that under the Health & Disability Commissioner legislation there is provision for exemplary damages; Do you know that?

Pike There may well be, I don't know that.

Tipping J I think that is right, I think I can see it on the page.

Elias CJ It's just that the wider statutory context would have to be looked at.

Pike Yes. I can't advance that point. It's a little radical really. It was abolishing them in negligence and that comes back to the point whether the Court feels that it wouldn't wish to look at that matter until it had a full set of trial facts before it.

Elias CJ Well then without wanting to pin you down too much Mr Pike

Pike No I need to be

Elias CJ The point you're pressing most strongly is that you want a hearing before trial, so it's really a point of law before trial on the s.319 application and whether exemplary damages are available at all for negligence?

Pike Well yes, that's the one and the other one is perhaps whether or not the action as pleaded arises out of personal injury and is therefore statute barred under the ACC legislation.

Elias CJ Yes. So leaving the test for exemplary damages, if there is exemplary damages, and this tangled up point that you raise about the Crown Proceedings Act for determination following trial

Pike Yes, definitely.

Elias CJ Good, thanks.

Pike But that's the case.

Elias CJ Thank you. Mr Henry.

Henry I think having heard that all I can usefully say Your Honours is that while the pleading says outrageous, I've never considered that this case is going to be one where conscious recklessness is not going to be an element of what we're seeking to prove, I certainly, without conceding the point, do not see it as one where conscious recklessness

Tipping J Well you don't have to worry about that because Mr Pike's not asking for us to clarify that.

Henry Well that's what I came to talk about.

Elias CJ Well we don't need to hear you about that. So really I think all you need to address us on is whether there are reasons why we shouldn't get off the table at this stage, whether exemplaries are available at all arising out of negligence, and also whether ACC is a bar.

Henry Well we take the position that it's one that needs to go back to the facts properly. We need complete discovery, complete pleadings to a trial pleading.

Elias CJ I understand that but how do

Henry Then my learned friend can make applications and bring it up the system if he wishes under other rules.

Elias CJ How does establishing the facts help you with those two points?

Henry The ACC bar is a policy decision, and at the end of the day

Elias CJ Isn't it a statutory interpretation?

Henry It is but you can't interpret it without facts around it. Now I haven't said like my learned friend says I've said that this is a compensatory claim. It's not, it's a punitive action, but it is being brought in the light of a very real position for ACC compensation. My client does not get ACC compensation

Tipping J But what I can't understand, I'm sorry to interrupt you Mr Henry, is whatever the facts were of an instant case, that would assist in determining the ACC bar point.

Henry Because Sir when you consider the Act, what you're saying is because everybody gets compensation under the Act, therefore we can take this interpretation, because this litigation is about the ability of the Courts to supervise the standards of a Government Department, and if you form the view that as a matter of policy this Act does not let us bring punitive damages, then you are foregoing that jurisdiction, and we say that that is fundamentally in principle wrong, because you see we can't get nominal damages in negligence, so unless we've got a viable head of damages that arises out of the tort, there is no tort.

Tipping J But the question whether your client's eligible for ACC payment surely is a given one way or the other.

Henry But Sir it's a huge factor to understand the full extent of what that means as a policy issue when you interpret the statute, because at the end of the day, anybody, a housewife in particular, who has a serious accident, does not get any compensatory payment. All they can do is

get a Social Welfare benefit for life. And that needs to be fully explored and teased out in the lower Courts

Blanchard J I don't see how establishing the facts in the particular case will assist on that argument.

Henry Well Sir it assists in the sense that you can't take a legal point in a vacuum and determine it. You've got to have a set of facts, apply it to the facts because the policy implications of your decision, particularly to this appellant, is absolutely huge.

Tipping J We have a set of facts. We have them as pleaded in your amended statement. Let us assume all that is true.

Henry No Sir what you have is a set of facts pleaded based off us having access to a file that we know has been sanitised by the Probation Officer before it's given to us. We've not had access at Departmental records. We've not had access at the memorandums that are sure to exist showing that they knew that this woman was under-resourced; they knew that she was offered training courses instead of looking after her charges. There's a whole raft of this case that's missing from the pleading still. I can't plead that because I don't know what's happened.

Elias CJ But Mr Henry, in the earlier hearing I had understood you to be accepting that you needed to know where you stood. I would have thought these two points that Mr Pike is pushing for today – I'm with you on the facts in the sense that negligence I think is pretty fact-specific usually, and he's not pushing for that. He's simply raising two pre-emptory impediments which I would have thought it was in your client's interest to have resolved speedily before you embark upon a costly hearing, so if exemplaries are simply not available at all, which as Mr Pike says is a fairly extreme position to be taking, the sooner you know that the better, and similarly if ACC is an impediment, if the legislation as a matter of statutory interpretation is a total impediment, then you really need to know that too.

Henry I accept Your Honour that it would be nice to know that in advance. The thing is in our submission to determine it fairly, and this is thinking does develop on from your judgment, we really strenuously urge on the Court the need to bring it forward to you with the facts for the simple reason that the decision to interpretation on both points Your Honour's raised, the policy ones, and the policy is determined between the parties, based on the facts of the parties, and in our submission as we've reflected on this question more closely, this is one that it would be very dangerous to interpret the ACC Act in the absence of the full facts because

Elias CJ Well I find that hard to understand because I'm just trying to feel for why the specific facts of the particular case are going to help in what is

not – yes there may be issues of policy that have to be addressed, but surely it's legislative policy we'll be looking at here.

Henry            That facts that we're concerned about is to have a factual basis before you that clearly shows there is an ongoing need for the Courts to supervise Government Departments.

Tipping J        But if Parliament has on proper interpretation taken that away

Henry            With the greatest of respect Sir, no. They've taken away compensatory damages

Tipping J        No, that's the merits, but the theory of it is, and I'm inclined to agree with the Chief Justice subject to what more you may be able to say, that surely if this is an action precluded at law because of a statute, then the sooner we all know, the better.

Henry            No Sir, it's not an action precluded. What it is is you have an action that requires an element of damage because you can't seek a nominal award

Tipping J        You can't seek damages of any kind on Mr Pike's proposition as to the way the statute should be interpreted.

Henry            Yes, he's happy to say that the statute has taken away any sort of aggravated or punitive damage fullstop.

Tipping J        Yes.

Henry            And I accept that if he can establish that then the tort dies, not because the tort or the cause of action's been abolished, because the damage has been abolished.

Tipping J        Well that's getting a bit jurisprudential

Henry            But that is a reality.

Tipping J        The end result is that your client can't succeed.

Henry            The end result is we don't have a cause of action because we've got no damage we can plead. I've got a duty of care without a damage, which means I've got a duty of care that has no benefit whatsoever because it can't be brought into Court without a damage that's valid.

Tipping J        Let's come back to the crunch. In this exercise we would assume everything in your favour. That you could prove everything that the law requires for exemplary damages as a matter of fact, but says Mr Pike, assuming all that there is no cause of action. Now how can you be disadvantaged by that?

Henry            Only in the argument Sir that in our submission the full light of day of the facts will have a huge impact on how you interpret the legislation. It's not an academic outside the realm of reality decision and we can put it no higher than that.

Tipping J        Yes, I understand, thank you.

Elias CJ          I would have thought it was Mr Pike who was more at risk of a preliminary determination that exemplaries are not barred. I mean he's taking the risk in that because of course something is absolutist as that is quite difficult to achieve on a strike-out hearing as a matter of law, or as a preliminary point of law, so I don't understand really why the facts are so

Henry            Well we take the view that once we get into the facts and the trial opens and runs properly this will die as an issue to be quite honest. I do not believe that his client will be in the position to even remotely try and run these sort of arguments once we've been through the facts.

Tipping J        Well that's highly illogical, because he says however good the facts are for the plaintiff, it's been taken away. I just don't understand the logic of that.

Henry            Well Sir it is not necessary a legal logic, but that will be the factual reality of the trial.

Blanchard J      Well that's all very well. You might win at trial, but then have it taken away on appeal, because legally it's unsound.

Henry            But that's the reality of all trials Sir, we face the field

Blanchard J      But it's cruel.

Henry            With the greatest of respect Sir, we have the greatest of confidence that once the facts are out no Court is going to interpret the Act the way you are suggesting, and I accept the Chief Justice's point that Mr Pike is at the far greater risk in the way it's being taken but we submit that it would be better to come with the full facts and determine this issue, because it's not just going to be that issue, there's going to be a whole raft of other issues and they are going to be brought back here in any event to argue something out of the facts possibly. This is not a case that's going away simply and quickly.

Elias CJ          If we're not with you on this Mr Henry, how long do you think we would need for a hearing to determine the two points that Mr Pike is putting forward?

Henry            It's a day to a day and a half.

Elias CJ Yes I think it's probably two days, yes, or may be more. You've got a lot of reading to do.

Henry Well the principles kept expanding quickly, but I would need a very clear definition of what the issues are so that we know what we're coming to.

Tipping J Well it's whether you're barred by ACC action whether exemplary negligence should be altogether abolished.

Henry Valid on what basis – pure interpretation?

Tipping J Well we will find out when we see the submission. I mean pretty simple propositions.

Blanchard J The other question is how soon we'd be able to get to a hearing? Are you likely to be available for a couple of days in the early months of next year.

Henry Yes, we'll make time to be available Sir, the Supreme Court comes first.

Blanchard J I'm not sure whether Mr Pike's commitments

Henry I think he's got an 8<sup>th</sup> December Privy Council which is the only other major impediment he has, but next year he should be free.

Pike I don't have anything profound. I've got the Privy Council on the 25<sup>th</sup> February again. I don't know about the 8<sup>th</sup>. We have not been told yet as we stand here. We still don't know whether we're going to hear our case in the Privy Council on the 8<sup>th</sup> or not. But the certain one is 25<sup>th</sup>, 26<sup>th</sup> February, *Barlow*, that is going ahead, but other than that I can fit in. The work's done for that basically so I'm in the hands of the Court.

Elias CJ So if we aimed for mid-March or so Mr Pike?

Pike Yes.

Elias CJ Yes, alright. Is there anything else you want to add Mr Henry?

Henry No Your Honour I think the debate has covered everything that can usefully be said as far as I'm concerned, but I'm certainly able to make time in March with the Registrar to suit us both in Court.

Elias CJ Thank you. Mr Pike is there anything rising out of that?

Pike No there isn't, may it please the Court.

Elias CJ We'll take a short adjournment, thank you.

9.46am Court Adjourned

10.01am Court Resumed

Elias CJ Yes thank you. We'll issue a minute but the terms will be that Crown having indicated that the other matters that it wishes to raise may need to be seen in a factual context. The Court is prepared to set the hearing down, resume the hearing on two points. First whether the claim should be struck out on the basis that exemplary damages are never available for claims in negligence as a matter of law, and secondly whether the claim should be struck out on the basis that the ACC legislation bars claims for any damages arising out of personal injury. Does that cover those two points Mr Pike.

Pike It does Your Honour, may it please the Court.

Elias CJ Thank you. Mr Henry?

Henry Yes thank you Your Honour.

Elias CJ Thank you, and the matter will then be set down for hearing in March. The Registrar will confer with you about a suitable date, thank you.

10.02am Court Adjourned