



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

TRACEY IDA PEKA AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
IDA HAWKINS v SAM TE HEI

(SC 30/2025) [2026] NZSC 121

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

What this judgment is about

The Prisoners’ and Victims’ Claims Act 2005 (PVC Act) sets out procedures which, broadly, regulate the ability of prisoners to claim compensation from the Crown in respect of breaches of their rights while in prison; and allows the victims of the offences for which the prisoners were imprisoned to make further claims against the compensation paid to the prisoners, if they have a cause of action.

This appeal concerns whether a victim’s claim under the PVC Act discloses a cause of action for which damages were payable under either the common law or the Deaths by Accidents Compensation Act 1952.

Background

In June 1987, Ms Colleen Burrows, the 16-year-old daughter of Mrs Ida Hawkins, was raped and murdered by two men, one of whom was the respondent, Mr Sam Te Hei. He was convicted following a jury trial and sentenced to life imprisonment. He served over 30 years in prison before being released on parole in 2018.

In 2020, the Crown agreed to pay Mr Te Hei \$17,644 as compensation for breaches of his rights under the New Zealand Bill of Rights Act 1990 resulting from his mistreatment in prison. Mrs Hawkins then made a claim under the PVC Act for damages for emotional harm and exemplary damages in relation to the effects upon her of Mr Te Hei’s offending. On 10 November 2021, the Victims’ Special Claims Tribunal upheld Mrs Hawkins’ claim for

emotional harm, awarding her \$15,000 against Mr Te Hei. The Tribunal rejected her claim for exemplary damages.

On 30 November 2022, the High Court allowed Mr Te Hei's appeal against the Tribunal's decision, setting it aside. The Court held that the Tribunal had failed to identify a cause of action upon which Mrs Hawkins could sue under the general law. It also dismissed Mrs Hawkins' cross-appeal in relation to the Tribunal's refusal to grant her exemplary damages.

On 26 February 2025, the Court of Appeal allowed Mrs Hawkins' appeal against the High Court decision, referring the claim back to the Tribunal on the basis that she may have had a claim against Mr Te Hei on a ground not considered by the High Court, nor the Tribunal.

Mrs Hawkins died following the hearing before the Court of Appeal but prior to it issuing judgment. This potentially engaged section 3 of the Law Reform Act 1936, which provides that a cause of action survives the death of a person for the benefit of that person's estate, but exemplary damages are not recoverable in respect of such a claim. The Court held that section 3 did not apply because the cause of action on which Mrs Hawkins' claim was based had "merged" in the Tribunal's judgment, which survived even if the original cause of action did not.

On 25 August 2025, the Supreme Court granted the appellant (Ms Peka, the personal representative of Mrs Hawkins' estate) leave to appeal and the respondent leave to cross-appeal. The approved questions were: (a) whether the Court of Appeal was correct to allow the appeal and dismiss the cross-appeal; and (b) whether the Court of Appeal was correct to refer Mrs Hawkins' claim back to the Victims' Special Claims Tribunal for reconsideration in light of its judgment.

Before the Supreme Court, the appellant identified two potential pathways by which the claim by Mrs Hawkins against Mr Te Hei could be upheld:

- (a) through a common law (tort) claim for exemplary damages; or
- (b) through a claim under the Deaths by Accidents Compensation Act for compensatory damages arising from Ms Burrows' wrongful death.

Supreme Court decision

The Supreme Court has unanimously dismissed the appeal, allowed the cross-appeal and set aside the direction for reconsideration.

Claim in tort

In *van Soest v Residual Health Management Unit* [2000] 1 NZLR 179 (CA), a Full Court of the Court of Appeal held that a claim in negligence by a secondary victim (a person not directly impacted by the allegedly tortious conduct but who suffered emotional harm because of it) can only arise if the wrongdoing caused the secondary victim to suffer a recognisable psychiatric illness or condition. The Court left open whether the secondary victim is required to witness the event that causes the mental injury or its immediate aftermath (see at [15]).

The Supreme Court rejected the appellant's submission that the Court should remove these two requirements. First, such a change would involve recognising liability for a broader category of case than the present one. Significant developments in tort law of this kind normally reflected changing societal needs and expectations, and the Court had not been provided with any evidence demonstrating whether such developments were necessary or appropriate. The issues involved were complex and raised questions of indeterminate liability. Secondly, the PVC Act context—including its streamlined processes and small number of claims—was ill-suited to deal with the complex issues involved (see at [25] and [32]–[35]).

For similar reasons, the Court declined to recognise a novel tort based on wrongful death, without the requirements the appellant challenged (see at [36]).

As to the cross-appeal, on section 3 of the Law Reform Act, the Court first rejected the appellant's submission that it should overrule the decision of the Court of Appeal in *Re Chase* [1989] 1 NZLR 325 (CA), which held that exemplary damages were not available in respect of claims surviving a person's death for the benefit of their estate under section 3. The argument that the legislation did not mean what it appeared to say was well traversed in that case, and a purposive approach did not suggest a different result (see at [39]–[40]).

Secondly, the Supreme Court held that the Court of Appeal had erred in holding that section 3 did not apply as Mrs Hawkins' claim had “merged” in the Tribunal's judgment. The Supreme Court accepted the respondent's argument that the merger principle did not apply if the order of the appeal court required a retrial—when that was the case, there was not yet a judgment with which the claim had merged. Here, the inquiries the Tribunal would undertake were analogous to a retrial, and the merger principle therefore did not save the claim in tort from the effect of the Law Reform Act (see at [41]–[42]).

Claim under the Deaths by Accidents Compensation Act

As to the second pathway, the appellant asked the Court to overrule the Court of Appeal decisions in *McCarthy v Palmer* [1957] NZLR 620 (CA) and *Pou v British American Tobacco (New Zealand) Ltd* [2006] 1 NZLR 661 (CA). The Court of Appeal in those decisions held that damages under the Deaths by Accidents Compensation Act were limited to compensation for pecuniary losses. This had been the position in New Zealand and England for over a century (see at [44]–[48]).

The Supreme Court declined to overrule *McCarthy* and *Pou*. It accepted that, on the wording of the legislation, a claim for damages for mental injury was not necessarily excluded. But, given the circumstances, if there was to be a change to the law, it must be one effected by the legislature (see at [49]).

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