

**IN THE SUPREME COURT OF NEW ZEALAND
I TE KOTI MANA NUI O AOTEAROA**

SC 16/2022

BETWEEN

ROBERT ROPER
Appellant

AND

MARIYA ANN TAYLOR
First Respondent/Cross-Appellant

AND

ATTORNEY-GENERAL
Second Respondent

SC 23/2022

BETWEEN

ATTORNEY-GENERAL
Appellant

AND

MARIYA ANN TAYLOR
First Respondent/Cross-Appellant

AND

ROBERT ROPER
Second Respondent

**Amended Submissions of Mariya Ann Taylor in opposition to the
submissions of Robert Roper**

1 October 2022

Solicitor acting:
Geraldine Whiteford
Chambers Craig Jarvis
Level 1 172 Ponsonby Road
Ponsonby Auckland 1011
PO Box 47 830 Ponsonby
Auckland 1144
DX CP 29503
09 378 6662
GWhiteford@ccj.co.nz

Counsel acting:
Graeme Little SC
Level 1, Giffords Building
cnr High Street and Vulcan Lane
Ph: 027 366 0250
glittle.chambers@xtra.co.nz

May it Please the Court

Submissions of Mariya Ann Taylor in opposition to the submissions of Robert Roper

The Cross Appellant says:

1. The events said to be those giving rise to cover occurred between 1986 and 1988.
2. The statute current at that time was the Act of 1982. That Act provided cover for mental injury arising from bodily harm caused by rape. The cross-appellant was not subjected to rape. She was subjected to threats of sexual violence expressed orally and was assaulted in a variety of ways including occasions of transitory discomfort from a grasping of her upper arm while being threatened and minor transitory discomfort from being tapped with an iron bar while being pushed into a wire mesh cage. None of the physical assaults amounted to physical injury within the 1982 Act. The Act provided that any injury was suffered when the sufferer was first treated for the mental injury as the injury which in the present case occurred in late 2015 or early 2016 30 or so years after the events giving rise to the injury and more than 23 years after the 1982 Act had been repealed.
3. The 1992 Act provided a continuation of cover if it had crystallised by the suffering of the mental injury during the currency of the prior Act and also qualified for cover under the then current Act. The 1992 Act removed the amorphous entitlement held to be available under *ACC v E*¹ with the result that Ms Taylor would not have had cover under the 1992 Act as she had suffered no physical injury giving rise

¹ *Accident Compensation Corporation v E* [1992] 2 NZLR 426 (CA)

to her mental injury under the prior Act nor had she suffered a criminal act in the schedule to the 1982 Act. Her suffering injury to crystallise her entitlement to cover was still 15 or 16 years in the future when the 1992 Act was repealed by the 1998 Act.

4. The current Act, 2001 is the Act in force when Ms Taylor suffered her injury. When it came into effect was 13 years after the events causative of the suffering. Cover requires the occurrence of facts from which suffering of injury occurs. That occurred from 1986 to 1988 in this case. The 1982 statute dealt with the circumstances as they arose and the injury was suffered (the completing circumstance) under the current Act. S 11 Legislation Act 2019.
5. The section deeming the date of the suffering of the injury was not retrospective and did not retrospectively confer cover even if the 1980s events had been within schedule 1 which they weren't. None of the criminal conduct of Roper constituted any of the crimes within the schedule.
6. S 21 is the current section conferring entitlement to cover for injury arising from certain criminal acts and is prospective only. This section was said by counsel representing the appellants in the court of Appeal to be apposite for the circumstances of this case - a submission that her Honour French J said was a bombshell for the appellant (in the Court of Appeal). The appellant argued that S 21 A of the Act added in 2005 was an express retrospective statute to provide for historical cases of injury from certain criminal acts, the situation the appellant was in. Unfortunately the benevolence of the Parliament was limited to providing retrospectively for those injured by certain criminal acts performed before 1 April 1992 and who were first treated for the mental injury (suffered) between 1 April 1992 and 30 June 1999. The bombshell the appellant submitted was merely a damp squid and if parliament had intended to confer cover at large it would have said so as it was required to do by the Legislation Act following the Court of

Appeal's compelling and thorough reasoning in *S v Attorney-General*² which seems to have been the genesis for S 21 A particularly at [26] [25 and 27] where the absence of retrospectivity and the date of suffering injury was in a section providing for claims not cover. Particularly where another section was clearly retrospective, S 11 which deprived people of existing common law rights.

7. It is submitted that the same reasoning applies equally to the later amending provision in 21 B which is clearly expressed to be prospective without a hint of retrospectivity in the section which must be compared with the clear wording of S 21 A providing retrospectivity a comparison which the Court of Appeal undertook in *S v Attorney General*.
8. The statute clearly establishes there is no current entitlement to cover and as such there is no issue arising as to differentiating between causation of the mental injury that would require the Trial Judge to differentiate between those acts that gave rise to cover and those that did not. If the Trial Judge were required to undertake such a task the burden would be on the defendants to establish that her mental injury due to the conduct of the appellants not the subject of cover was not more than de minimus. (*Bonnington Castings v Wardlaw*³, *Watts v Rake*⁴ and *Purkess v Crittenden*⁵)
9. If this Honourable Court rejects the Cross Appellant's submissions it is still clear that the most terrifying aspect of the respondent Roper's conduct was the car journey when she thought she could be raped or murdered - this in the course of her unlawful detention.
10. As a common law action it is for the defendant to identify any entitlement to compensation from another source. Damages are a right

² *S v Attorney-General* [2003] NZCA 149

³ [1956] AC 613

⁴ [1960] HCA 58

⁵ [1965] HCA 34

not discretionary.

11. The first respondent/cross appellant also seeks to rely on the submissions filed in opposition to those of the Attorney General and her earlier submissions opposing the grant of leave.

1 October 2022

G Little SC/G Whiteford
Counsel for cross-appellant/first respondent

TO: The Registrar of the Supreme Court of New Zealand
AND TO: The Appellant Robert Roper
The Appellant Attorney - General

CERTIFICATE OF COUNSEL

Counsel certifies that this submission does not contain suppressed information and is suitable for publication.