

**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 the Attorney-General**

1 October 2022

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May it Please the Court

First Respondent/Cross-Appellant's submissions in reply

1. The issue of cover before the Court resolves into a question of construction of the Accident Compensation Act 2001.
2. That task must be undertaken in accordance with the dictates of the Legislation Act 2019 – in force from 28 October 2021 And the Interpretation Act 1999 (now repealed).
3. This provides for the interpretation and application of legislation. S 4(1) b.
4. The purposes of Part 2 of the Act are:
 - (a) to state principles and rules for the interpretation of legislation. S 8
5. S 9 (1) A provision of this part applies to legislation that is part of the laws of New Zealand unless –
 - (a) the legislation provides otherwise; or
 - (b) the context of the legislation requires a different interpretation.
 - (2) the provisions of this part also apply to the interpretation of this Act.
6. S 10 (1) the meaning of legislation must be ascertained from its text and in the light of its purpose and its context.
 - (2) subsection 1 applies whether or not the legislation's purpose is stated in the legislation.
 - ...
 - (4) examples of the indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material

and the organisation and format of the legislation.

7. S 11 legislation applies to circumstances as they arise.

8. S 12 legislation does not have retrospective effect.

9. The Accident Compensation Act 2001

The facts.

- i. The first respondent/cross appellant was subject to sexualised behaviour by her superior in the RNZAF between 1986 and 1988. As a result of being subject to the criminal actions of her superior she resigned from the force and fled to the United Kingdom to get as far away from her predatory superior as she could.
- ii. She has not returned to live in New Zealand since and has been living in Australia for the last 30 or so years. She has returned to New Zealand occasionally for short periods to stay with one or other of her parents when ill.
- iii. In 2015 or 2016 she was diagnosed with and treated for Post-Traumatic Stress Disorder arising from the conduct of her superior in the Airforce.
- iv. She did not suffer injury for the purposes of the Accident Compensation Act 1982 nor for the purposes of the Accident Rehabilitation and Compensation Act 1992 as she had not received a diagnosis or treatment of her mental injury during the currency of either of these Acts.
- v. The Accident Compensation Act 2001 was in force when she suffered her mental injury.

- vi. That Act provides cover for mental injury in a number of situations. There is no entitlement to cover outside the provisions of the Act which are itself a code and if an entitlement to cover for standalone mental injury is not expressed then no cover is provided. (*Expressio unius est exclusio alterius*).

10. S 20 Cover for personal injury suffered in New Zealand (except mental injury caused by certain criminal acts or work-related mental injury)

(1) A person has cover for a personal injury if—

- (a) he or she suffers the personal injury in New Zealand on or after 1 April 2002; and
- (b) the personal injury is any of the kinds of injuries described in S 26 (1) (a) or (b) or (c) or (e); (none of which are injuries suffered by the first respondent, (d and da) are excluded) and
- (c) the personal injury is described in any of the paragraphs in subsection (2).

11. The personal injury was suffered while living in Australia in 2015 or 2016 and was not any of the injuries specified in S 26 subsections 1 or 2. The section does not apply in any event when cover is sought for mental injury caused by certain criminal acts. S 20 (4): A person who suffers personal injury that is mental injury in circumstances described in section 21 has cover under section 21, but not under this section.

12. S 21 Cover for mental injury caused by certain criminal acts.

Date of injury is established by S 36 for the purposes of ss (3) relating to the relevance or otherwise of residence. This section is, as mandated by the Interpretation Act 1999 (now repealed) and the

Legislation Act 2019 prospective applying to circumstances as they arise and does not have retrospective effect (S 12). Accordingly the section does not apply to circumstances that arose between 1986 and 1988.

13. S 21A.

This section is expressly declared to be retrospective in operation. The Explanatory Note to the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3) states at p 5:

ACC cover for sexual abuse claimants for whom sexual abuse occurred before 1974.

Currently, the Act (like its predecessor, the Accident Insurance Act 1998) provides that the date on which a person suffers a mental injury arising from sexual abuse is the date on which the claimant first receives treatment for that mental injury. Cover and entitlements may therefore be provided to people who suffered sexual abuse before 1 April 1974 (that is, before the introduction of the ACC scheme). The Court of Appeal has held that the Accident Rehabilitation and Compensation Insurance Act 1992 did not provide cover for mental injury arising from certain sexual crimes that occurred solely before 1 April 1974 and that any affected claimants have the right to pursue civil action. The Bill provides cover and entitlements for people who were first treated for mental injury as a result of sexual abuse during the period in which the Accident Rehabilitation and Compensation Insurance Act 1992 was in force, from 1 April 1992 to 30 June 1999, as long as the other cover and entitlement criteria are met. The Bill also precludes affected claimants from obtaining cover and also taking civil action.

At p 13 the following appears:

*Clause 8 inserts new section 21A into the principal Act. New section 21A applies to persons who suffered mental or nervous shock arising from sexual abuse that occurred before 1 July 1992 (including before 1 April 1974). Claims for cover in those cases that were made under the Accident Rehabilitation and Compensation Insurance Act 1992 (the 1992 Act) were treated by the Corporation as being covered under section 8(3) of the 1992 Act. The Court of Appeal in *S v Attorney General*¹ [2003] 3 NZLR 450 (CA43/02) and *W v Attorney General* (CA 227/02) held that-*

- * Section 8(3) applied only if the event that gave rise to the mental or nervous shock occurred on or after 1 July 1992:
- * the 1992 Act did not bar common law claims for mental or nervous shock resulting from sexual abuse that occurred before 1 July 1992.

New section 21A deems cover to have existed under the 1992 Act for the affected claimants, and treats entitlements already paid as having been entitlements paid under the 1992 Act.

14. S 21A (1) This section applies to persons who suffered personal injury that is mental or nervous shock suffered as an outcome of any act of any other person, which act -

(a) was performed on, with or in relation to the claimant
...; and

(b) was within the description of any offence listed in Schedule 1 of the 1992 Act and was performed before 1 July 1992 (including before 1 April 1974) and was performed -

¹ Paras [25] - [29]

- (i) in New Zealand; or
- (ii) outside New Zealand, and the claimant was ordinarily resident in New Zealand within the meaning of the 1992 Act when the act was actually performed.

(2) for the purpose of subsection (1), -

- (a) the personal injury is deemed to have been suffered on the date of the first treatment that the claimant received for the personal injury as that personal injury; and
- (b) that first treatment must have been received on or after 1 July 1992 and before 1 July 1999.

...

(5) However, the following provisions apply to civil proceedings brought before or after the commencement of this section seeking general damages for mental or nervous shock suffered by a person as an outcome of any act described in subsection 1 (the **proceedings**): ...

15. S 26 provides a personal injury includes mental injury suffered by a person in the circumstances described in S 21 or work-related mental injury in S 21B. Notably S 21A is not mentioned in that section or in S 36. S 21A is clearly a code within the Act to deal with all cases of sexual abuse occurring before 1 April 1992. The first respondent did not receive treatment for her injury within the prescribed dates in 1992 and 1999 and therefore had no cover or entitlement to compensation under the 1992 Act or otherwise.

16. S 21 B is prospective in operation only and the judgment on the recall by the Court of Appeal on the applicability of the section is incorrect in respect of the question of retrospectivity as legislation does not have retrospective effect. The first respondent/cross-claimant however supports the construction given to the expression 'sudden event' by the Court of Appeal.

17. The submissions for the Attorney-General do not point to any statutory provision conferring cover that would give rise to the operation of the bar prohibiting common law proceedings in this case. To the contrary, S 21A endorses the right of persons in the situation of the first respondent to bring and maintain a common law action for compensatory damages.
18. The following paragraphs refer to the paragraphs in the Attorney-General's submissions.
19. [1] and [2] - neither assaults, threats, or false imprisonment gave rise to cover from the operation of S 8 (3) of the 1992 Act.
20. [4] - the detention in the car and the tyre cage was consistently maintained by the first respondent to be the most terrifying aspect of sergeant Roper's conduct. The requirement to drive him home at night in an intoxicated state persisted even after he had been transferred to the base at Ohakea and it was this continuing state of affairs that led to her resignation and flight to the United Kingdom to get as far away from him as she could.
21. [5] - it was yet another and most injurious aspect of his predatory conduct.
22. [6] - the first respondent was not aware until diagnosis in 2015 or 2106 that she suffered from a psychiatric injury and required specific treatment for it. No cover was available to her at that time because any entitlement she may have had did not crystallise by treatment before 1 July 1999.
23. [9] - numerous mental injury cases have been litigated involving ACC since its inception and the legislature has made a clear decision in S 21A to permit common law proceedings for pre 1992 caused mental injuries.

24. [20] - the number of cases determined in the courts refutes the proposition advanced about the certainty of compensation - particularly in standalone mental injury cases.²
25. [34] - one may ask rhetorically what section clearly provides for compensation in respect of mental injury resulting from false imprisonment.
26. [35] - the first respondent did not have cover under the 1982 Act, the 1992 Act or the 1998 Act as she had not suffered mental injury as required by any of those Acts prior to their repeal and replacement by the Act of 2001.
27. [36] - S 21A - enshrines in statute the fundamental right of an injured citizen to seek redress for a wrong committed against them.
28. The Attorney-General would seek to see the first respondent without compensation or damages for the ruination of her career and her enjoyment of life. A strange social contract if she is entitled to neither form of redress.
29. The cross appeal should be allowed in respect of the holding of the Court of Appeal that there was cover in respect of any of the incidents giving rise to the Post traumatic Stress Disorder and the appellants' appeals should be dismissed with costs to be paid to the first respondent/cross-appellant.

² *K S B v Accident Compensation Corporation* [2012] NZCA 82 and *C M L v ACC* [2006] 3 NZLR 127

1 October 2022

G Little SC/G Whiteford
Counsel for the 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.