

**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**

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**Outline of Oral Argument on behalf of the First  
Respondent/Cross-Appellant**

**4 October 2022**

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**CERTIFICATE OF COUNSEL**

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

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### May it Please the Court

1. The cross-appellant was exposed to sexual abuse by her commanding officer between 1986 and 1988.
2. The Accident Compensation Act 1982 provided cover in a primary way; s2 **Interpretation** (1) Personal injury by accident.
3. In addition it provided cover for sufferers of mental injury from crimes in the schedule which comprised only s128, s132 and s201 of the Crimes Act 1961.
4. It may today be thought to be surprising that the Court of Appeal in *E*<sup>1</sup> and *Willis*<sup>2</sup> held that some non-scheduled criminal conduct could also provide cover for standalone mental injury.<sup>3</sup> One may ask rhetorically why parliament restricted the schedule to the 3 nominated crimes if cover existed anyway for mental injury arising from lesser crimes including assault, battery and the like. Neither *E* nor *Willis* were sexual crime cases so the issue in the present case never arose in either of them.
5. The Act was said to be a code, s27, and it is submitted that lesser crimes than those scheduled causing standalone mental injury did not provide cover.
6. The scheduling of 3 crimes would have been superfluous if all crimes of a sexual nature gave rise to cover.
7. The cross-appellant was first treated for PTSD in 2015 or 2016.
8. The 1982 Act was repealed and replaced by the 1992 Act. If it were thought that cover had been available for the conduct of the cross-appellant's superior, that entitlement did not enure after the repeal of the 1982 Act.
9. If there was any doubt that cover was available under the 1992 Act s135(5) of that Act provided that to have cover under that Act the claimant must have had cover under the 1982 Act and also under the 1992 Act.
10. No cover existed under the 1982 Act for indecent assault, it not being scheduled in that Act.
11. No cover existed under the 1992 Act because it only applied to personal injury occurring on or after 1 July 1992; s8(1). Personal injury is defined in s4, s8 ss(1) and (3). S63(3) deems the date of suffering to be the date of treatment for circumstances described in s8(3).

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

<sup>2</sup> *Willis v Attorney-General* [1989] NZLR 574 (CA)

<sup>3</sup> under s2 **Interpretation** (1) "Personal injury by accident" – (a) includes (iv) Actual bodily harm (including pregnancy and mental or nervous shock) arising by any act or omission of any other person which is within the description of any of the offences specified in sections 128, 132, and 201 of the Crimes Act 1961, ...

12. The 1992 Act abolished any entitlement to cover for standalone mental injury unless it was the outcome of physical injury or alternatively the events causative of the mental injury occurred during the currency of the 1992 Act and were scheduled crimes.<sup>4</sup> The 1992 Act did not bar the bringing of common law proceedings in respect of mental injury arising from criminal acts occurring before 1 July 1992.<sup>5</sup> The 1982 Act did not schedule indecent assault and the cross-appellant was not subject to indecent assault during the currency of the 1992 Act.
13. The 1992 and 1998 Acts were both repealed before the cross-appellant had been treated for her mental injury.
14. The 1992 Act did not bar common law claims for mental or nervous shock resulting from sexual abuse that occurred before 1 July 1992.<sup>6</sup>
15. S21 of the 2001 Act provides that injury is suffered when the claimant first receives treatment for that injury as that injury (s36). This section, 21, provides cover for the sufferers of mental injury caused by scheduled crimes in the Act. This section operates prospectively in respect of events occurring after the enactment of the Act; (Legislation Act 2019 s11, s12). The exception is s21A which is made expressly retrospective to deal with events occurring prior to the enactment of the 2001 Act.
16. The parliamentary intention expressed in the new s21A confirms that mental or nervous shock arising from sexual abuse that occurred before 1 July 1992 did not bar common law claims.<sup>7</sup>
17. The new s21A deemed cover to have existed and made provision in respect of common law claimants who had already received compensation in respect of their mental injury.
18. Clause 6 in the Bill<sup>8</sup> amends the principal Act by repealing s19 and substituting the following section: 19 Key terms in this part. Mental injury (which is defined in s27).
19. Clause 8 inserts new section 21A.

**“21A Cover under Accident Rehabilitation and Compensation  
Insurance Act 1992 for mental injury caused by certain criminal  
acts**

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<sup>4</sup> *S v Attorney-General* [2003] 3 NZLR 450 (CA) (*S v AG*)

<sup>5</sup> *S v AG*, Explanatory Note to the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3) 165-1 pp. 5, 6, 13 (*Clause 8*). (**IPRCAB**). (2001 Act)

<sup>6</sup> P13 **IPRCAB**

<sup>7</sup> S21A(5)

<sup>8</sup> P13 **IPRCAB**

“(1) This section applies to persons who suffered personal injury that is mental or nervous shock as an outcome of any act of any other person, which act –

“(a) was performed on... the claimant and

“(b) was within the description of any offence listed in the First Schedule of the (1992 Act); and

“(c) was performed before 1 July 1992...

“(2) For the purposes of **subsection (1)** (the provision of cover)

“(a) the personal injury is deemed to have been suffered on the date of the first treatment that the claimant received for that 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;...

20. The cross-appellant did not qualify for cover under that section because her treatment was not received in the relevant period.
21. The cover conferred by this section retrospectively granted a right in the very limited circumstances outlined.
22. Notwithstanding the retrospective entitlement to cover by s21A, subsection (5) provided for 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) of s 21A.
23. As stated in the explanatory note, nothing in the retrospective conferral of cover barred common law proceedings for general damages before or after the enactment of the section. Accordingly there is no bar to the present proceedings.

4 October 2022

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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 in SC16/2022  
The Appellant Attorney - General in SC23/2022