***L (80/2023) V R* – APPELLANT'S ROADMAP OF ORAL SUBMISSIONS 19 MARCH 2024**

1. Interpretation of s 16(2)(b):

    1.1 Correct approach – an unwilling and unpersuadable overseas witness is unavailable

    1.2 Caselaw supports unpersuadability being part of the s 16(2)(b) test:

        1.2.1 NZCA authority: *Union Steamship; R v M; Gao v Zespri*

        1.2.2 United Kingdom authority reaches the same conclusion: *Spencer on Hearsay*; *R v Crilly*

    1.3 *Huritu v Police* concerned a similar test (s 16(2)(d)) and was wrongly reasoned

    1.4 Mutual Assistance in Criminal Matters Act 1992 supports appellant's interpretation

    1.5 Cross-check against NZBORA – the appellant's approach better protects affirmed criminal defence rights

    1.6 Responding to Crown objections

    1.7 Alternative routes to admission aren't necessary to resolve this case – but even so, an alternative route would simply reauthorise a long-standing exception

2. C's hearsay evidence was admissible:

    2.1 The evidence was relevant

    2.2 The evidence was reliable

    2.3 It was not reasonably practicable for C to be a witness

3. Miscarriage of justice:

    3.1 The trial was unfair:

        3.1.1 Arbitrariness – C's evidence was excluded due to the defendant's poor luck

        3.1.2 Crown closing was unfair and would have been different if relevant and reliable hearsay evidence was before the trial court

        3.1.3 The right to offer a defence was impermissibly undermined

    3.2 There is a real risk the outcome of the trial was affected