

# SC 30/2025: Peka (Hawkins) v Te Hei

## Roadmap of oral submissions for appellant/cross respondent

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### *Appeal*

Counsel: NM Pender

#### **Introduction**

☞ *App subs § 1*

#### **Issues**

☞ *App subs § 3*

#### **Context**

☞ *App Subs § 2*

☞ *Chronology*

#### **Prisoners' and Victims' Claims Act 2005**

☞ Sections 3(2)(b), 4 ("offence"), 8 ("victim"), 15, 18, 28(2), 35, 39, 46, 47

#### **Evidence of claim**

☞ Prescribed claim form (COA tab 8)

☞ I Hawkins affidavit (COA tab 12) at [2], [4], [6], [10] – [11]

#### **Tribunal decision (COA tab 4)**

☞ [20] – [24]

#### **Support for Judge Blackie's decision**

##### **Emotional harm compensation available under criminal law**

☞ Sentencing Act 2002: sections 8, 32, 33, 35, 36, 38

☞ *App Subs* §§ [5.4] – [5.9], [5.17] – [5.19]

☞ *Sargeant v Police* at 458

☞ *Davies v Police* at [10], [11], [23]

☞ *Oceans Fisheries Ltd*: [39], [112] - [128]

☞ *R v Meads* [60] – [61], [80]

### **Compensation for mental distress and emotional harm available under civil law**

☞ *App subs* §§ [5.1] – [5.3]

☞ *Mouat v Clark Boyce* (Cooke P at 468-469, Richardson J at 573-574)

☞ Emotional harm also a recognised head of damages under employment, privacy and human rights legislation

### **Common law claim for mental injury**

☞ *App subs* § 4

#### **Why this issue should be determined on appeal**

☞ *App subs* §§ [4.1] - [4.4]

☞ *Cross resp subs* § 3

#### **Can Mrs Hawkins claim for mental injury?**

☞ *Cross resp subs* § 4

#### **van Soest v Residual Health Management Ltd**

☞ Majority [65] – [69], [74]

☞ Minority (Thomas J) [79], [103] – [107]

#### **Saadarti v Moorhead**

☞ *App subs* §§ [4.11] – [4.14]

☞ *Saadarti*: [14] – [16], [19], [21]

#### **Tribunal findings consistent with mental harm**

☞ *Tribunal Decision (COA tab 4)*: at [22]

☞ *App subs* §§ [4.18]- [4.19]

### **Right to emotional harm damages for wrongful death**

#### **Death by Accident Compensation Act**

☞ *App subs* §§ [5.20] – [5.22]

☞ Death by Accidents Compensation Act, ss 4 – 7

☞ *Pou v British American Tobacco (NZ) Ltd* at [34] – [38]

☞ CA Decision at [40] – [51], [52]

### **Solatium and bereavement damages available in other jurisdictions**

- ☞ App subs §§ [5.10] – [5.16]
- ☞ *Paul v Royal Wolverhampton NHS Trust*: [252] – [253] re Scots law

### **Common law if depart from Baker v Bolton**

- ☞ *Baker v Bolton*
- ☞ CA Decision at [53] – [63]
- ☞ Room in the common law for both emotional harm damages and compensation for mental injury: *App subs* §§ [5.27] – [5.30]

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### **Statute law and common law**

- ☞ *App's subs* §§ [5.31] – [5.32]
- ☞ Arvind & Steele (Resp's Auths R 55) at 13 and new chapter
- ☞ A Burrows (App' Supps Auths) §4 "Always speaking" and p 10
- ☞ *Smith v Fonterra* [92] – [94] and [100] – [101]

### **Exemplary damages and the impact of Ida Hawkins' death**

- ☞ *Cross respondent submissions* §§ [2.1] – [2.9]
- ☞ *Tribunal decision* at [24]
- ☞ Law Reform Act 1936: section 3
- ☞ Accident Compensation Act 2001: sections 317(1) and 319(1)

### **Purpose of exemplary damages**

- ☞ *Donselaar*: at 106-107
- ☞ *Couch*: Elias CJ at [19], [29] – [30] – [107]; Majority at [86] – [88], [92] – [93], [95] – [99]

### **Exemplary damages in personal injury actions bear no relationship to "exemplary damages" as intended by s 3(2) of the Law Reform Act 1936**

- ☞ Law Reform Act: section 3
- ☞ *Re Chase* interpretation of scope of s. 3(2) at 330 - 331
- ☞ Madeleine Hay: 170, 171 and 173-175
- ☞ *Hamlin* (CA)

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## **The effect of Accident Compensation**

### **Mental injury under accident compensation scheme in 1987**

☞ *App's Subs* §§ [6.1] – [6.2]

### **Emotional harm**

☞ *App's Subs* §§ [6.3] – [6.5]

## **Referral back to Tribunal?**

☞ *App's Subs* §§ [7.1] – [7.2]

## **Conclusion**

☞ *App's subs* §§ [8.1] – [8.3]

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*Response to cross appeal*

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## **Merger of judgment**

### **Why exemplary damages survive Mrs Hawkins' death**

☞ *App's subs* §§2.10 – 2.14

☞ *Hagaman*

☞ *Lew v Lew*

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*Reply (if required)*

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