IN THE SUPREME COURT OF NEW ZEALAND **SC 51/2025**

I TE KŌTI MANA NUI O AOTEAROA

IN THE MATTER OF | MŌ TE TAKE	a second appeal against convictions
BETWEEN | I WAENGA IA	**T (SC 51/2025)** Appellant | Te Kaipīra
AND | ME	**THE KING** Respondent | Te Kaiurupare

OUTLINE OF APPELLANT'S ORAL SUBMISSIONS
12 March 2026 | 12 Māehe 2026

Next event: appeal on 12 and 13 March 2026

Before: Winkelmann CJ, Ellen France, Kós, Miller and Cooke JJ

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OUTLINE OF APPELLANT'S ORAL SUBMISSIONS

1. In oral submissions, T will address prosecutorial (mis)use and judicial direction. The other issues—concerning the presentation—are dealt with under those heads.

Prosecutorial (mis)use

2. The Court should affirm the *DH* principle in [30(b)]—prohibiting linkage—applies to all participants, including prosecutors, consistent with *M (CA 23/2009)* and *OY*.

   a. First, it is the evidence that corrects, not a prosecutor's address: para 69.

   b. Second, no continual correction is required; once led, the jury is educated without the risk of linkage arising from an address by counsel: para 70.

   c. Third, because the evidence does not go to the individual case, it is a fallacy to suggest the evidence can be used to combat misconceptions advanced by the defence; to do so is to use it diagnostically: para 71.

   d. Fourth, the prohibition against linkage is not limited to the expert: para 72.

   e. Fifth, due to the nature of a closing address, reference to the evidence within the closing risks linkage: para 74.

   f. Sixth, the focus is not on whether the prosecutor employs the evidence diagnostically but rather how the jury might use the evidence: para 75.

3. The prosecutor's use in this case risked diagnostic use by the jury.

   a. T's case was that C was lying, having been put up to it by T's mother. The agreed facts did not assist; referencing it in closing had the effect of suggesting that it was relevant to the particular case, but it was not: para 81.

   b. The prosecutor specifically referenced the agreed facts in the context of whether C's account should be believed. He referenced the agreed facts that complaints are "*often* delayed": para 86. This added detail of "often" was superfluous and risked diagnostic use of itself: paras 58-59. This was compounded by the prosecutor referencing it in support of the case: para 86.

   c. Its only purpose was to bolster the complainant's credibility: para 88. An implication the Court of Appeal accepted existed: para 87.

Judicial directions

4. The Court should affirm the *DH* principle in [30(e)]—requiring mandatory judicial directions on three issues.

5. Directions are necessary because this evidence—without any impropriety on the prosecutor's part—carries with it real risks of misuse by the jury: para 100.[1]

6. The Court of Appeal correctly held the failure to give a direction was an error. However, it erred by not finding it resulted in a miscarriage. The three reasons promoted by the Court against miscarriage were in error.

   a. First, the agreed fact document (as the witness) failed to meet the *DH* principles in [30(b) and (d)]: para 109. The agreed fact document did not say it drew on generic research; its purpose was neutralising misconceptions; it was not commenting on the facts of the case; or that the research says nothing about the case: para 48.

   b. Second, the prosecutor's opening remarks were disjointed from receipt of the agreed fact document. In any event, it was undermined by his subsequent reference in closing which suggested it was relevant in *this* case: para 110.

   c. Third, the Judge's summation did not remedy the situation but amplified the error by telling the jury it was 'for them to determine' its relevance: para 111.

7. As to the additional matters raised by the Crown:

   a. Fourth, the evidence assumed little significance because it was not mentioned by defence counsel; but it was mentioned at four different points in the four-day trial: para 114.

   b. Fifth, the evidence being agreed fact did not lessen the risk of improper reasoning but increased it: para 113.

   c. Sixth, the mixed verdicts are irrelevant as this Court and the Court of Appeal have accepted in other cases that mixed verdicts cannot assist: para 116.

8. Finally, the prosecutor never sought the mandatory direction despite leading the evidence: para 115.[2]

9. The usual risks with this evidence were amplified by the Crown's use in closing (whether it was permissible or not), the superfluous information and the lack of compliance with the other *DH* principles (particularly [30(b) and (d)]).

Counsel for the Appellant certifies that, to the best of their knowledge, this outline contains no suppressed information and is suitable for publication.

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1 Also see paras 31, 33, 34, 75; and see concessions by the Crown in its submissions at paras 52-56.

2 See *R v K (CA300/04)* CA300/04, 13 December 2004 at [14] (Mahoney's Bundle, p 531).