IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 88/2025

BETWEEN	**MAXWELL RICHARD ALLEN PARORE**
	Appellant
AND	**ATTORNEY-GENERAL**
	Respondent

WRITTEN SUBMISSIONS FOR TE KĀHUI TIKA TANGATA HUMAN RIGHTS COMMISSION

Dated: 11 March 2026

Counsel certify that these submissions are suitable for publication under the Supreme Court Submissions Practice Note 2023.

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I. Overview

1. It is common ground between the parties that breaches of the New Zealand Bill of Rights Act 1990 (**NZBORA**) require an effective remedy.[1] This reflects the long-standing maxim *ubi jus ibi remedium*: where there is a right, there is a remedy.[2] The right to an effective remedy has been recognised as "one of the most fundamental and essential rights for the effective protection of all other human rights";[3] it is reflected in multiple international human rights instruments,[4] it was central to the majority's reasoning in *Baigent's Case*,[5] and it was affirmed by this Court in *Taunoa v Attorney-General*.[6] Failure to ensure an effective remedy when an NZBORA right has been violated is inconsistent with the principle that courts should "give individuals the full measure of the enacted fundamental rights and freedoms" in NZBORA, having regard to "its importance and special character".[7] The Human Rights Commission takes these points to be settled law.

2. This case raises the issue of what an "effective remedy" requires. On this question, the Commission makes the following points: (i) an effective remedy requires cessation of the breach and full reparation to the victim; (ii) full reparation means wiping out all the consequences of the breach and providing some combination of restitution, compensation, rehabilitation, and/or satisfaction as appropriate; (iii) material and non-material harm should be compensated where causation is established; and (iv) "vindication" is not the only purpose of NZBORA remedies to the extent it is understood to exclude compensation.

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1 Appellant's submissions at [4.1]; and Respondent's submissions at [2].

2 See Joseph Gerald Pease and Herbert Chitty *A selection of legal maxims by Herbert Broom* (8th ed, Sweet & Maxwell, London, 1911) at 153; *Earthquake Commission v Insurance Council of New Zealand Inc* [2014] NZHC 3138, [2015] 2 NZLR 381 at [172]; and *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 (HC) at 187. See also *Simpson v Attorney-General [**Baigent's Case**]* [1994] 3 NZLR 667 (CA) at 717 per McKay J.

3 International Commission of Jurists *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (revised ed, Geneva, 2018) [**The Right to a Remedy**] at 53.

4 See for example art 2(3) of the International Covenant on Civil and Political Rights ; art 8 of the Universal Declaration of Human Rights; art 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms [**ECHR**]; art 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; and art 47 of the Charter of Fundamental Rights of the European Union.

5 *Baigent's Case*, above n 2, at 676 per Cooke P, 699 per Hardies Boys J, and 718 per McKay J

6 *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429 at [106] per Elias CJ, [253] per Blanchard J ("The Court must provide an effective remedy."), and [300] per Tipping J ("There can be little doubt that the task of a Court faced with a breach of the Bill of Rights Act is to award an effective remedy.").

7 *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551 at [41] per Winkelmann CJ.

II. Legal framework: the approach to NZBORA remedies

A. The meaning of an effective remedy is informed by art 2(3) of the ICCPR

3. There is a close relationship between the International Covenant of Civil and Political Rights (**ICCPR**) and NZBORA. The twin purposes of NZBORA, as set out in its Long Title, are to: (a) "affirm, protect, and promote human rights and fundamental freedoms in New Zealand"; and (b) "affirm New Zealand's commitment to the [ICCPR]".[8] The express reference to the ICCPR reflects the fact that Parliament enacted NZBORA shortly after New Zealand ratified the ICCPR's Optional Protocol.[9] Thus, there is a strong presumption that NZBORA should be interpreted, applied and developed consistently with New Zealand's commitment to the ICCPR.[10] As this Court has recognised, the presumption of compatibility "is of particular relevance here vis-à-vis the ICCPR because a stated purpose of [NZBORA] is to 'affirm New Zealand's commitment to the [ICCPR]'".[11]

4. This is reflected in the significant role that the ICCPR has played in the judicial development of NZBORA remedies. Each of the majority Judges in *Baigent* expressly relied on art 2(3) of the ICCPR, particularly the art 2(3)(a) obligation to "ensure that any person whose rights or freedoms herein recognized are violated shall have an effective remedy", in confirming there is a power to award NZBORA damages.[12] President Cooke invoked art 2(3) and the right to an effective remedy at international law, noting again the strength of the formulation of that obligation, in finding that compensation was available for a breach of NZBORA.[13] According

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8 Notably the Crown does not refer to this second equally important purpose in its written submissions: see Respondent's submissions at [5], [15] and [21].

9 In *Baigent's case*, above n 2, Casey J considered this timing was significant, observing at 691: "The Act [NZBORA] reflects [ICCPR] rights, and it would be a strange thing if Parliament, which passed it one year later [after New Zealand ratified the Optional Protocol], must be taken as contemplating that New Zealand citizens could go to the United Nations Committee in New York for appropriate redress, but could not obtain it from our own Courts."

10 This presumption operates generally in any event: see chs 9–10 of Shaheed Fatima *Using International Law in Domestic Courts* (Hart Publishing, Portland, 2005). Fatima notes that the broader legal policy—that domestic law should conform with international law where possible—has "been acknowledged even by strict adherents of dualism such as Dicey": at [9.5], citing AV Dicey *An Introduction to the Study of the Law of the Constitution* (10th ed, Macmillan, 1959) at 62–63.

11 *Fitzgerald*, above n 7, at [225], n 325 per O'Regan and Arnold JJ. See also at [42] per Winkelmann CJ ("[NZBORA's] enactment fulfils, in part, New Zealand's obligations under the ICCPR").

12 The Committee has described art 2(3) as a "treaty obligation inherent in the [ICCPR] as a whole": *General Comment No 29* CCPR/C/21/Rev.1/Add.11 (31 August 2001) at [14]. New Zealand has accepted this obligation without reservation: The Committee has taken the view that "reservations to article 2 would be incompatible with the [ICCPR] when considered in the light of its objects and purposes": *General Comment No 31* CCPR/C/21/Rev.1/Add.13 (26 May 2004) [**GC 31**] at [5].

13 *Baigent's Case*, above n 2, at 676, noting also that art 2(3) requires states to "develop the possibilities of judicial remedy".

to his Honour, the courts "would fail in our duty if we did not give an effective remedy to a person whose legislatively affirmed rights have been infringed".[14] Justice Casey considered that art 2(3) was "of particular relevance" in the light of para (b) of the Long Title of NZBORA.[15] Justice Hardie Boys said he would be "most reluctant to conclude that [NZBORA], which purports to affirm this commitment [to art 2(3)], should be construed other than in a manner that gives effect to it".[16] Justice McKay recognised that the commitment to the ICCPR, and in particular art 2(3), is part of the "declared purpose" of NZBORA, which must be considered in interpreting it.[17]

B. An effective remedy requires full reparation

5. At international law, the substance of an effective remedy is generally accepted to require: (i) the cessation of wrongdoing together with guarantees of non-repetition (where applicable); and (ii) full reparation.[18] For example, art 30 of the International Law Commission's *Articles on State Responsibility*[19] provides that a State responsible for an internationally wrongful act is under an obligation to: (i) cease the act, if it is continuing; and (ii) offer appropriate assurances and guarantees of non-repetition, if circumstances so require. Article 31 then provides that the State is obligated "to make full reparation for the injury caused", which includes "any damage, whether material or moral".

6. The United Nations Human Rights Committee (**Committee**) likewise said in *Thompson v New Zealand* that art 2(3) required New Zealand to "make full reparation" (including compensation) to individuals whose rights had been violated, and to "take all steps necessary to prevent similar violations from occurring in the future".[20] Without reparation, "the obligation to provide an effective remedy, which

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14 At 676. See also at 691 per Casey J, 702 per Hardie Boys J, and 718 per McKay J.

15 At 690–691. His Honour also noted the requirement to "develop the possibilities of judicial remedy".

16 At 699–700.

17 At 718.

18 *The Right to a Remedy*, above n 3, at 65. These are the substantive requirements, which are at issue in this appeal; there are also formal requirements, such as accessibility, promptness, and provision by an independent body: at 65. See also *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* GA Res 60/147 A/Res/60/147 (2006), Annex [**Basic Principles**] at [2(c)] and [11(b)]. The Basic Principles were adopted by the United Nations General Assembly by consensus on 16 December 2005.

19 *Articles on the Responsibility of States for Internationally Wrongful Acts* GA Res 56/83 A/Res/56/83 (2001) [**Articles on State Responsibility**]. Although set out within a non-binding document, the Articles on State Responsibility are "widely regarded as (mainly) reflecting extant customary international law on the subject": *Laws of New Zealand* International Law: Principles at [189], n 2.

20 *Thompson v New Zealand* CCPR/C/132/D/3162/2018 (7 June 2022) at [9].

is central to the efficacy of article 2, paragraph 3, is not discharged".[21] The Permanent Court of International Justice (now the **ICJ**) has also explained that the obligation to make reparation is a principle of international law, "and even a general conception of law". It is "the indispensable complement of a failure to apply a convention".[22]

C. *Full reparation may require restitution, rehabilitation, compensation, and/or satisfaction*

7. Full reparation "must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed".[23] The same approach is taken by the European Court of Human Rights (**ECtHR**):[24] the "fundamental principle underlying the award of compensation is that the [ECtHR] should achieve what it describes as restitutio in integrum"; that is, the applicant should "in so far as this is possible, be placed in the same position as if [their] Convention rights had not been infringed".[25] This applies equally to breaches of the European Convention's art 6 right to a fair trial.[26]

8. Under art 31 of the *Articles on Responsibility of States*, the consequences that must be undone include "any damage, whether material or moral". This includes harms both tangible, such as monetary loss, and intangible, such as pain and suffering.[27]

9. The Committee has said that achieving full reparation (in addition to cessation and non-repetition) under art 2(3) can involve: (i) restitution; (ii) rehabilitation;

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21 GC 31, above n 12, at [16]. See also *Basic Principles*, above n 18, at [2(c)], [3(d)], [11(b)], and [15]–[18].

22 *Factory at Chorzów (Merits) (Germany v Poland)* (1928) PCIJ (series A) No 17 [***Chorzów Factory***] at 29. See also *Baigent's Case*, above n 2, at 699 per Hardie Boys J, quoting *Velasquez Rodriguez* (1990) 11 Human Rights Law Journal 127 at 129: "The position at international law is encapsulated" in the proposition that "every violation of an international obligation which results in harm creates a duty to make adequate reparation". See also in the human rights context: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136 at [152]–[153]; and *Aloeboetoe v Suriname (Reparations and Costs)* I/ACtHR, 10 September 1993 at [43].

23 *Chorzów Factory*, above n 22, at 47. See also *Report of the International Law Commission on the work of its fifty-third session* [2001] vol 2, pt 2 YILC [**Draft Articles with commentaries**] at 91: "The obligation placed on the responsible State by article 31 is to make 'full reparation' in the *Factory at Chorzów* sense."

24 See ECHR, above n 4, arts 13 (on the right to an effective remedy) and 41 (on the obligation to afford just satisfaction).

25 *Anufrijeva v Southwark London Borough Council* [2003] EWCA Civ 1406, [2004] QB 1124 at [59]. See also *Simoncini v San Marino* (14396/24) Section V, ECHR at [184]. This was recognised and approved by Tipping J in *Taunoa*, above n 6, at [323].

26 *R (Greenfield) v Secretary of State for the Home Department* [2005] UKHL 14, [2005] 1 WLR 673 at [10], quoting *Kingsley v United Kingdom* 35 EHRR 177 at [40].

27 *Draft Articles with commentaries*, above n 23, at 92.

(iii) compensation; and/or (iv) satisfaction.[28] Restitution, compensation and satisfaction are also the accepted forms of reparation at international law, deployed "either singly or in combination".[29]

10. Restitution means restoring, as far as possible, the right that has been violated.[30] Examples include the restoration of liberty where someone has been arbitrarily detained, the restoration of property that has been unreasonably seized, or the restoration of employment that was discriminatorily terminated.[31] Restitution may thus overlap with the obligation of cessation, since ceasing the violation may sometimes also restore the original position.[32] Because restitution aligns most closely with the general principle that full reparation should wipe out all the consequences of the wrongful act, it is often the primary form of reparation.[33]

11. Rehabilitation means providing medical or psychological care where needed as a result of a violation.[34] This might be necessary, for example, following a breach of the right not to be subjected to torture[35] (to the extent not covered by ACC).

12. Compensation means payment or otherwise accounting for any financially assessable damage not made good by restitution.[36] Compensation covers both material and non-material harm.[37] It includes compensating for physical or mental harm, lost opportunities, material damage, loss of earnings, and expenses required for assistance such as medical services.[38] The Committee has stated that the ICCPR "generally entails appropriate compensation".[39]

13. Satisfaction means making good any injury insofar as restitution or compensation (or rehabilitation) is insufficient.[40] Examples include acknowledgement of the

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28 United Nations Human Rights Committee *Guidelines on measures of reparation under the Optional Protocol to the ICCPR* CCPR/C/158 (2016) [**UNHRC Guidelines**] at [2]; and GC 31, above n 12, at [16].

29 *Articles on State Responsibility*, above n 19, art 34.

30 *UNHRC Guidelines*, above n 28, at [6].

31 See *Basic Principles*, above n 18, at [19]. The corresponding NZBORA sections are ss 22, 31 and 19.

32 *Draft Articles with commentaries*, above n 23, at 89.

33 At 96–97.

34 *UNHRC Guidelines*, above n 28, at [8]; and *Basic Principles*, above n 18, at [21].

35 NZBORA, s 9.

36 *Articles on State Responsibility*, above n 19, art 36. For example, restoring employment (a form of restitution) will not undo the earnings lost for the period the employment was terminated; thus, to achieve full reparation, that loss must be compensated.

37 *UNHRC Guidelines*, above n 28, at [10].

38 *Basic Principles*, above n 18, at [20]. Tipping J in *Taunoa*, above n 6, at [322] wrote that "Economic loss clearly qualifies, as does compensation for non-economic or intangible damage or detriment".

39 GC 31, above n 12, at [16].

40 *Articles on State Responsibility*, above n 19, art 37(1).

breach, expression of regret, a formal apology,[41] a judicial declaration,[42] a commemoration or tribute,[43] or an award of symbolic damages.[44] Assurances of non-repetition may also amount to a form of satisfaction.[45] The aim is generally to remedy damage that is not financially assessable.[46]

14. It should be clear from the above that any combination (from one through to all) of the various forms of reparation may be needed to achieve full reparation and wipe out all the consequences of a breach. What is required depends on the circumstances: what is the breach, and what are its consequences? If wiping out the consequences of the breach requires payment of damages, whether in place of property that cannot be returned (as restitution), to compensate for consequential loss,[47] or to mark the breach symbolically (i.e. provide satisfaction), then damages will be part of an effective remedy.[48]

D. Causation

15. These modes of reparation are subject to the requirements of proportionality and causation. To be entitled to compensation for injury, "there must be a clear causal connection between the damage claimed by the applicant and the violation".[49] This is understood in the legal sense: the injury must be proximate or foreseeable, and not too remote.[50]

16. It is for *this* reason that violations of fair trial rights do not always result in an award of damages. As explained in *R (Greenfield) v Secretary of State for the Home Department*, fair trial rights "have one feature which distinguishes them" from other rights; that is, "it does not follow from a finding that the trial process has involved a breach of an article 6 [fair trial] right that the outcome of the trial process was

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41 Art 37(2); and *UNHRC Guidelines*, above n 28, at [11(e)].
42 *UNHRC Guidelines*, above n 28, at [11(a)].
43 *Basic Principles*, above n 18, at [22].
44 *Draft Articles with commentaries*, above n 23, at 106.
45 At 106.
46 *Draft Articles with commentaries*, above n 23, at 106.
47 Section 92M of the Human Rights Act 1993 also contemplates awarding damages for pecuniary and non-pecuniary loss suffered as a result of a breach under that Act.
48 As Elias CJ expressed in *Taunoa*, above n 6, at [109], there is no reason why damages should provide less than an effective remedy for the breach and its consequences. Note that the Canadian Supreme Court has acknowledged that a countervailing factor to damages is where there are "concerns for effective governance". The example provided was where a public actor was enforcing a statute that was later declared invalid, since enacted laws should be enforced until declared invalid. The Court considered that the exercise of legislative and policy-making functions should not result in damages: *Vancouver v Ward* 2010 SCC 27, [2010] 2 SCR 28 at [38]–[40].
49 See for example *Agrokompleks v Ukraine (Just Satisfaction)* (23465/03) Section V, ECHR 25 July 2013 at [76].
50 *Draft Articles with commentaries*, above n 23, at 93.

wrong".[51] Thus causation tends to be harder to establish in fair trial rights cases. But there is no rule that violations of fair trial rights *should not* result in damages where such an award is a necessary element of an effective remedy on the facts,[52] or that such awards can never be necessary for fair trial rights breaches.[53]

17. The corollary is that if causation *is* shown, then compensation should generally follow. Thus, the ECtHR allows damages for pecuniary and non-pecuniary loss caused by violation of fair trial rights, such as for loss of earnings or profits, a loss of a real opportunity to achieve a different result, a feeling of frustration and helplessness, and distress and anxiety.[54] The question for a court is whether it has been shown that the breach of fair trial rights caused loss which needs to be compensated to put the applicant into the position they would be in had the breach not occurred.

III. *Taunoa* and subsequent case law: what of "vindication"?

18. The overseas and international materials traversed above have made limited use of the word "vindication",[55] unlike recent NZBORA jurisprudence. The focus on "vindication" in this jurisdiction has created confusion and distracted from the obligation to provide an effective remedy that affirms New Zealand's commitment to and reflects New Zealand's obligation under the ICCPR. The problem lies in a shift between two different senses of the word "vindication". Distinguishing these two senses also reveals that there is no clear majority in *Taunoa* on what an effective remedy requires.[56] That is an issue on which the guidance of this Court would assist in the coherent development of NZBORA remedies.

19. The first sense of "vindicating" a right simply describes the outcome when an effective remedy is provided. The operative obligation is to provide an effective

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51 *Greenfield*, above n 26, at [7]. A court is generally unwilling to "speculate on what the outcome of the particular proceedings would have been had the violation not occurred", but it may award damages if satisfied a party has been "deprived of a real chance of a better outcome": see at [8] and [14].

52 Cf. Respondent's Submissions at [44]–[45].

53 Cf. Respondent's Submissions at [20]. The *Baigent* majority did not find that the criminal law already contained effective and ample remedies for fair trial right breaches; they said instead that exclusion of evidence was generally the effective remedy for unlawfully obtained evidence. Hardie Boys J expressly said that "plainly a remedy of that kind is totally irrelevant in many instances": *Baigent's Case*, above n 2, at 676 per Cooke P, 703 per Hardie Boys J, and 718 per McKay J.

54 See *Greenfield*, above n 26, at [11]–[16]. Lord Bingham noted at [15] that causation of loss in fair trial rights cases "pre-eminently calls for a case by case judgment".

55 See for example: *Greenfield*, above n 26, at [9] and [19]; and GC 31, above n 12, at [15].

56 Cf. Respondent's Submissions at [28]–[39] and [67.1].

remedy consistently with the ICCPR. That was the sense in which "vindication" was used in *Baigent*, where brief reference was made to "the remedy which will best vindicate the right infringed",[57] but "vindication" did not drive the reasoning as if it had inherent meaning. The focus was on providing an effective remedy in the sense of fulfilling New Zealand's obligations under art 2(3) of the ICCPR;[58] if that was achieved, then the right was "vindicated".[59] This was also Elias CJ's approach in *Taunoa*, in which her Honour referred to "such vindication" as providing "appropriate remedies" in light of the ICCPR obligation to provide "effective remedy".[60] Thus "where a plaintiff has suffered injury through denial of a right, he is entitled to Bill of Rights Act compensation … The amount of such compensation must be adequate to provide an effective remedy. Without adequate compensation, the breach of right is not vindicated".[61]

20. The second sense of "vindicating" a right is a narrower, more abstract sense of repairing social harm by "marking the breach".[62] As a purpose, it is distinct from that of compensation. Blanchard, Tipping, and McGrath JJ all used "vindication" in this sense in *Taunoa*. Justice Blanchard said vindication meant to "defend against encroachment or interference" so that public confidence in the efficacy of protection would not be diminished.[63] Justice Tipping said that vindication meant "defending and upholding the value and importance of the right", including ideas of denunciation and marking public disapproval.[64] And McGrath J said vindicating the right meant "upholding it in the face of the state's infringement".[65]

21. These three Judges differed, however, on the *relationship* between an effective remedy and this narrow sense of vindication. Justices Blanchard and McGrath saw (narrow) vindication as the primary purpose of NZBORA remedies.[66] Justice Blanchard wrote that "making amends to a victim is generally a secondary function" in public law and NZBORA damages were "more to mark society's disapproval of official conduct".[67] Justice McGrath wrote that vindication "in the

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57 At 692 per Hardie Boys J.
58 See at 676 per Cooke P, 690–691 per Casey J, 699–700 per Hardie Boys J, and 718 per McKay J.
59 Cf. implied by Respondent's Submissions at [17] and [21].
60 *Taunoa*, above n 6, at [106].
61 At [109].
62 See at [367] per McGrath J.
63 At [253], quoting *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) at [82].
64 At [300].
65 At [366] and [372].
66 At [253] per Blanchard J and [366] per McGrath J.
67 At [259].

sense of upholding [the right] in the face of the State's infringement" was the court's "principal objective", the focus being on "repair[ing] the social harm caused by the breach".[68]

22. In contrast, Tipping J saw both (narrow) vindication *and* compensation as having "equal claim for attention in providing an effective remedy for a Bill of Rights breach".[69] His Honour said that "it must generally be appropriate to compensate for demonstrable harm suffered as a result of the breach of a right of sufficient importance to be affirmed in the Bill of Rights Act"; otherwise, "[t]he law would be in a strange state if relatively innocuous common law breaches were compensated as of right whereas breaches of a statutorily affirmed human right of an important kind were deemed less worth of compensatory redress".[70] In substance, this aligns Tipping J with Elias CJ's position and that of the majority in *Baigent*. A narrow conception of vindication is thus not inherently problematic; it only becomes so if it is adopted to suggest that an effective remedy does not need to compensate, as that approach would create a gap between NZBORA remedies and an effective remedy under the ICCPR.

23. Justice Henry was "in general agreement with both Blanchard J and Tipping J".[71]

24. Notwithstanding the lack of a clear majority on this point, there has been a trend in the case law where the purpose of NZBORA remedies is said to be "vindication" in the narrow sense that excludes compensation.[72] The Court of Appeal seems to have adopted that approach in this case as well.[73] This is inconsistent with the

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68 At [366]–[367].

69 At [317]. This is consistent with the Canadian approach, which views "vindication" narrowly in the sense of "affirming constitutional values", but also recognises compensation as a function of Charter damages—indeed, as the "most prominent function": see *Vancouver v Ward*, above n 48, at [25], [27] and [28].

70 At [318]. This Court has affirmed the constitutional importance of the NZBORA and the rights affirmed in it: see *Fitzgerald*, above n 7, at [41] and [51] per Winkelmann CJ, [206] and [221] per O'Regan and Arnold JJ, and [250] per Glazebrook J.

71 At [385]. The fact that his Honour said NZBORA remedies and tort remedies serve different purposes is not inconsistent with the reasons of Tipping J, who said that while private law cases focus on what the plaintiff should receive, NZBORA cases should consider what the plaintiff should receive *and* what the defendant should pay: at [318].

72 See e.g. *Combined Beneficiaries Union Inc v Auckland City COGS Committee* [2008] NZCA 423, [2009] 2 NZLR 56 at [63], holding that the "primary purpose" of NZBORA damages was "to mark the breach and to deter repetition"; it was "vindication, rather than redress, which is the objective of Bill of Rights damages". See more recently *Attorney-General v Morrison* [2025] NZCA 240, [2025] 2 NZLR 871 at [92], expressing the view that the primary purpose of public law damages was to "vindicate the breaches of the respondents' rights" as distinct from the purpose of compensation.

73 The Court adopted McGrath J's view in *Taunoa* that the principal objective of NZBORA remedies is to vindicate the right "in the sense of upholding it in the face of the state's infringement": CA Judgment at [92]. The Court concluded that the declaration fully vindicated Mr Parore's right

substance of *Baigent*, namely that an effective remedy must be provided to uphold New Zealand's commitment to the ICCPR. To the extent this trend has its origins in *Taunoa*, it also does not reflect a fully accurate reading of what the members of this Court said in that case. This case is an important opportunity to clarify this aspect of the law of NZBORA remedies.

IV. Costs in Criminal Cases Act 1967

25. The Crown has argued that the Costs in Criminal Cases Act 1967 (**CCCA**) precludes recovery of criminal defence costs as NZBORA damages.[74] The CCCA does not provide for the award of costs where a criminal proceeding has been stayed.[75] The Law Commission has described this as "an anomaly".[76]

26. If such costs are also not recoverable as NZBORA damages where they were caused by the NZBORA breach, then that would mean full reparation has not been achieved and would potentially place New Zealand in breach of its art 2(3) obligation. The better approach is to permit such costs to be recovered as NZBORA damages, as long as it is shown the costs were caused by the breach, such as where the bringing of the criminal proceeding itself was in breach of NZBORA.[77]

Dated: 11 March 2026

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without explaining why his out-of-pocket expenses or emotional harm were not relevant. The implication is that the Court saw vindication as distinct from and exclusive of compensation.

74 Respondent's Submissions at [98.1].

75 This means the District Court does not have the power to award costs for stayed criminal proceedings. It has been left open whether the High Court does under what used to be s 51G of the Judicature Act 1908 (now s 162 of the Senior Courts Act 2016): *Police v Brunton* HC Masterton AP 141/01, 17 July 2001 at [6] and [13]. An ICCPR-consistent interpretation would point towards the affirmative, at least in NZBORA breach cases. The trial in this case, however, occurred in the District Court, so this issue does not squarely arise.

76 Law Commission *Costs in Criminal Cases* (NZLC R60, 2000) at [60].

77 See *State of New South Wales v Cuthbertson* [2018] NSWCA 320, (2018) 99 NSWLR 120 at [47]–[48], in which the Court distinguished costs incurred in defending a malicious prosecution from defence costs incurred after a wrongful arrest. The former were considered recoverable because they were caused by an additional wrong (the malicious prosecution); the latter were not because a wrongful arrest does not necessarily give rise to a prosecution.