
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

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS



**Te Tari Ture
o te Karauna**
Crown Law

PO Box 2858
Wellington 6140
Tel: 04 472 1719

Contact Person:

Madeleine Laracy / Daniel Jones / Alan Goosen

Madeleine.Laracy@crownlaw.govt.nz / Daniel.Jones@crownlaw.govt.nz /
Alan.Goosen@crownlaw.govt.nz

Summary of Argument

1. The respondent's submissions will address:
 - 1.1 Principles of liability; [**Counsel: Jones**]
 - 1.2 The Court of Appeal's liability assessment; [**Counsel: Laracy**]
 - 1.3 The Costs in Criminal Cases Act 1967 [**Laracy**]; and
 - 1.4 Costs of proceedings in the lower courts. [**Jones**]

Principles of liability

The rights centered approach [written submissions at [14]-[16]]

2. The Court of Appeal followed the correct, rights centered approach, under which the protection and promotion of rights – not full compensation for pecuniary loss – is the primary, controlling purpose of remedies for rights breaches.
3. Under this right centred approach, damages are:
 - 3.1 a public law remedy, available not as of right, but if the Court considers it “appropriate and proportionate” (Tipping J *Taunoa*) in the circumstances of the case;
 - 3.2 the “principal objective” (McGrath J in *Taunoa*) of the remedy is to vindicate (“affirm, promote and protect”);
 - 3.3 this requires the Court to consider whether vindication has already been achieved through alternative forms of relief.
4. Therefore, whilst damages in private law give effect to the overriding compensation principle (subject to causation, remoteness and contribution), damages for rights breaches are employed flexibly, as and when it is appropriate to protect and promote rights.
5. The consequences of the adoption of the compensation principle as an overriding objective would: [*Written submissions at [67]*] (i) risk over-compensation of defendants who have already received effective remedies in criminal proceedings, so undermining public confidence in the justice system; (ii) risk having a chilling/distorting impact on prosecutors (re s25

breaches) and public authorities (re s27(1) breaches); (iii) would undermine the stability and coherence of the law as a result of the Court departing from one of its own decisions (*Taunoa v Attorney-General*) (iv) would risk undermining the principles of liability established in the law of private remedies; (vi) would limit the flexibility required for proper development of the law; and (vii) has not been fully embraced in any other common law jurisdiction.

Taunoa v Attorney-General

6. The approach adopted by the majority *Taunoa v Attorney-General* is: (i) consistent with *Baigent's case* [*written submissions at [17] to [27]*]; (ii) internally consistent [*written submissions at [28] to [39]*]; and (iii) has been followed in a number of cases by the lower courts [*written submissions at [40] to [43]*].

Wider legal context [written submissions at [44] to [56]]

7. The approach was developed to give effect to the obligation to provide effectives remedies (art2(3) ICCPR), in this common law jurisdiction. It is consistent with the approaches developed in other common law jurisdictions, to give effect to that obligation.

The liability assessment

8. The Court of Appeal was right to conclude that damages were not justified in the circumstances of this case. The relevant factors are:
 - 8.1 The significance of the stay and the declaration [*written submissions at [70] to [75]*].
 - 8.2 Limited impact of the prosecution on the appellant [*written submissions at [76] to [77]*]
 - 8.3 The decision to prosecute was not reckless [*submissions at [78] to [87]*]
 - 8.4 Limited infringement on the limitation on right to silence through the disclosure of a legal defence. [*submissions at [88] to [90]*]
 - 8.5 The loss was not caused by the breach [*submissions at [91] to [93]*]

8.6 The Commissioner's policy Statement CS 20/04 has now addressed the risk to the right to silence. *[submissions at [93] to [94]]*

The Costs in Criminal Cases Act 1967 *[submissions [96] to [98]]*

9. If the Court of Appeal was wrong and damages were required, they should be modest and not calculated with reference to the full indemnity costs of criminal proceedings.
10. Costs in criminal proceedings are governed by the Costs in Criminal Cases Act 1967 (CCCA). Where the legislature has that legal costs are not recoverable in criminal proceedings, a court may not subsequently permit those costs to be recovered as damages in civil proceedings. (NB, the issue of whether stay is covered by CCCA is currently before the Court of Appeal in another case).
11. In any event, under that Act a cost assessment would take into account the factors at s5(2). Full indemnity costs are rarely awarded and generally reserved for cases involving bad faith or gross misconduct.

Costs of proceedings in the lower courts

12. The appellant seeks indemnity costs for the hearings in the lower courts. He did not seek them in the High Court, where costs were agreed. There are no costs judgments to be appealed and the appellant is seeking to litigate matters that he chose not to litigate below. In any event he would not have been entitled to indemnity costs under r 14.6 of the High Court Rules 2016 for either the proceedings in the High Court or the Court of Appeal.

20 March 2026

M Laracy / D Jones / A Goosen
Counsel for the respondent