

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME,  
ADDRESS OR IDENTIFYING PARTICULARS OF THE WITNESS  
IDENTIFIED IN [13], [64] AND [65] OF THE JUDGMENT IN  
M v ROPER [2018] NZHC 2330 REMAINS IN FORCE.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 56/2020  
[2020] NZSC 152**

BETWEEN ATTORNEY-GENERAL  
Applicant

AND MARIYA ANN TAYLOR  
First Respondent

AND ROBERT ROPER  
Second Respondent

**SC 57/2020**

BETWEEN ROBERT ROPER  
Applicant

AND MARIYA ANN TAYLOR  
First Respondent

AND ATTORNEY-GENERAL  
Second Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: A C M Fisher QC, E N C Lay and K F Gaskell for  
Attorney-General  
J F Mather and L M Herbke for Mr Roper  
G F Little SC and G E Whiteford for Ms Taylor

Judgment: 21 December 2020

Reissued: 22 December 2020

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**JUDGMENT OF THE COURT**

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- A The applications for leave to appeal are dismissed.**
  - B Leave is reserved for the applicants to make a further application for leave to appeal to this Court on the issue of false imprisonment if the application to the Court of Appeal for recall of its judgment is unsuccessful.**
  - C The Attorney-General must pay Ms Taylor costs of \$1,250.**
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## **REASONS**

### **Background**

[1] These applications arise out of civil proceedings brought by Ms Taylor against Mr Roper for sexual assault and false imprisonment while both were employed by the Royal New Zealand Air Force in the late 1980s.

[2] Ms Taylor was 18 years of age when she joined the Air Force. Mr Roper was her superior. Ms Taylor alleges that between 1985 and 1988, Mr Roper bullied, verbally abused, sexually harassed, inappropriately touched and falsely imprisoned her while she was carrying out her duties. Ms Taylor left the Air Force in 1988.

[3] In 2014, Mr Roper was found guilty of 20 counts of sexual offending against members of his family and three other women. The offending took place between 1976 and 1988 and included sexual offending against a young woman who was on work experience at the Whenuapai airbase in 1987 (not Ms Taylor). Ms Taylor contacted police two days after the verdict.

[4] In 2016, Ms Taylor withdrew her police complaint and filed High Court proceedings against both Mr Roper and the Air Force, alleging that Mr Roper's actions caused her extreme distress, depression, anxiety and post-traumatic stress disorder. She also argued that the Air Force was vicariously liable for Mr Roper's actions and had breached its duty of care as her employer.

[5] The High Court found on the balance of probabilities that Mr Roper did assault and falsely imprison Ms Taylor as alleged.<sup>1</sup> It also found that those actions caused Ms Taylor’s post-traumatic stress disorder, but not her anxiety or depression.<sup>2</sup> But the Court held that Ms Taylor’s claims were time-barred by the Limitation Act 1950. The Court considered there was insufficient evidence that Ms Taylor was operating under a disability as at 1988, and so the exception under s 24 of the Limitation Act did not apply.<sup>3</sup> While it did not need to decide the point, the Court also considered that Ms Taylor had accident compensation (ACC) cover for her injury.<sup>4</sup> Given this outcome, the Court saw it inappropriate to consider whether the Air Force was vicariously liable for Mr Roper’s acts or whether it was directly liable to Ms Taylor in negligence.<sup>5</sup>

[6] On appeal, Ms Taylor challenged various aspects of the High Court ruling.<sup>6</sup> The Court of Appeal unanimously dismissed most of the grounds raised, including arguments that Ms Taylor’s claims did not accrue until December 2014<sup>7</sup> and that her assault claim was not covered by accident compensation legislation.<sup>8</sup> But, by a majority, the Court reversed the High Court’s decision on the issue of limitations. It found that Ms Taylor was operating under a disability from 1988 until 2014 when she learned of Mr Roper’s convictions, and so her claims were filed in time.<sup>9</sup> The majority also found that Ms Taylor’s false imprisonment claim was not barred, because it was not a claim for personal injury.<sup>10</sup>

### **The present applications**

[7] The Attorney-General applies for leave to appeal in respect of the false imprisonment issue. Mr Roper applies for leave to appeal both the false imprisonment issue and the limitations issue. Ms Taylor opposes the applications, but in the event

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<sup>1</sup> *M v Roper* [2018] NZHC 2330 (Edwards J) at [74]–[75] and [77].

<sup>2</sup> At [122] and [125].

<sup>3</sup> At [155].

<sup>4</sup> At [171] and [180].

<sup>5</sup> At [186].

<sup>6</sup> *Taylor v Roper* [2020] NZCA 268 (French, Brown and Clifford JJ).

<sup>7</sup> At [80]–[83] and [91].

<sup>8</sup> At [130] and [149].

<sup>9</sup> At [197] per Brown and Clifford JJ.

<sup>10</sup> At [205]–[208] per Brown and Clifford JJ, applying *Willis v Attorney General* [1989] 3 NZLR 574 (CA).

leave to appeal is granted, Ms Taylor seeks leave to cross-appeal on the issues of accrual and ACC cover for her assault claim.

[8] In a minute dated 29 October 2020, we raised with the parties the potential relevance of s 21B of the Accident Compensation Act 2001, which may provide cover for Ms Taylor independently of the grounds already argued. The section was not raised or addressed in either of the Courts below. The Attorney-General accepts that s 21B is relevant, but considers the false imprisonment issue is of general or public importance regardless. He therefore seeks a deferral of this Court's consideration of his application for leave pending resolution of an application for recall of the Court of Appeal's judgment. Mr Roper takes a different view and continues to pursue his application for leave because of the delay in resolution of the merits of his appeal should the s 21B issue be sent back to the Court of Appeal, and because s 21B does not affect his arguments on the issue of limitations. Ms Taylor submits that s 21B applies only to injuries suffered as a result of sudden events that occurred on or after 1 October 2008 and so does not apply to her.

### **Assessment**

[9] We do not consider it would be appropriate to hear an appeal on the false imprisonment issue until the parties have had an opportunity seek to argue the s 21B issue in the Court of Appeal. We recognise that this will cause delay, but that is unavoidable.

[10] As to the limitations ground in Mr Roper's application, while we agree this ground would not be affected by s 21B, we do not consider it meets the criteria for leave. The arguments advanced essentially challenge the Court of Appeal's assessment of the evidence. No question of general or public importance arises.<sup>11</sup> We are also satisfied that this ground does not meet the higher threshold for a miscarriage of justice in relation to civil appeals.<sup>12</sup>

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<sup>11</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>12</sup> Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (In Liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.

[11] In these circumstances, we consider that the applications for leave should be dismissed on the basis that the applicants may seek a recall in the Court of Appeal so that the issue of s 21B can be ventilated. The applicants may renew their applications for leave in this Court on the issue of false imprisonment should the Court of Appeal decline their application for recall. We do not consider it necessary to suspend the applications, as the Attorney-General requested, in order to preserve his challenge on the false imprisonment issue. In the event the Court of Appeal recalls its judgment, the Attorney-General may file a fresh application for leave if the Court rules in favour of Ms Taylor on s 21B; and if the Court rules against Ms Taylor on s 21B, its comments in respect of the false imprisonment issue will become obiter and not capable of being appealed directly unless in very exceptional circumstances.<sup>13</sup>

[12] It is unnecessary to address Ms Taylor's application to cross-appeal, it having been made in the event leave to appeal were granted.

[13] As Mr Roper is legally aided, we do not award costs against him.

## **Result**

[14] The applications for leave to appeal are dismissed.

[15] Leave is reserved for the applicants to make a further application for leave to appeal to this Court on the issue of false imprisonment if the application to the Court of Appeal for recall of its judgment is unsuccessful.

[16] The Attorney-General must pay Ms Taylor costs of \$1,250.

[17] The Registrar should provide a copy of this judgment to the Accident Compensation Corporation.

Solicitors:  
Crown law Office, Wellington for Attorney-General  
Barter Law, Auckland for Mr Roper  
Davenports City Law, Auckland for Ms Taylor

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<sup>13</sup> *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55; [2008] 1 NZLR 13 at [25].