



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

28 January 2025

MEDIA RELEASE

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at High Court Judgments of Public Interest: <https://www.courtsofnz.govt.nz/judgments/high-court/>.

Ms Taylor’s claim

Ms Taylor seeks an award of exemplary damages against the Royal New Zealand Airforce (RNZAF). Her claim arises out of the sexual abuse and false imprisonment she suffered at the hands of Mr Roper when they were both in the RNZAF in the 1980s. The claim is the last part of a proceeding which Ms Taylor began in 2016. The first High Court judgment was delivered in 2018. Following successive appeals, the Supreme Court confirmed that Ms Taylor’s claim for compensation is barred by the Accident Compensation Act 2001. See [9] and [17].

Exemplary damages are in a different category to those routinely sought in a civil claim. Rather than compensating for harm suffered, they are aimed at punishing a wrongdoer for outrageous conduct and deterring the wrongdoer and others from acting in the same way. Words like “contumelious”, “high-handed”, “oppressive” and “wilful” are used to describe the sort of conduct which attracts an award of exemplary damages. See [82].

Awards for exemplary damages in cases of negligence will only be made where the conduct is intentional, or where the defendant has a conscious appreciation of the risk of causing harm and makes a deliberate decision to run that risk. It is a very high threshold, and awards are rare. Exemplary damages are not a surrogate for compensatory damages and must not be allowed to subvert the accident compensation scheme. See [78]–[83].

Ms Taylor’s claim is that the RNZAF is either vicariously or directly liable for the actions of Mr Roper. She also claims that the RNZAF owed her a duty of care as an employer to protect her from Mr Roper. Ms Taylor’s claim is *not* for systemic failures in the way the RNZAF dealt with sexual abuse and misconduct in the 1980s. See [22]–[24].

To prove her claim, Ms Taylor seeks to adduce evidence in addition to that called at the 2018 trial. The evidence sought to be adduced is of a report commissioned by the Chief of the RNZAF in 2016 following Mr Roper’s convictions for sexual offending (the Joychild report). That application is opposed by the RNZAF. See [26]–[31].

Is the Joychild report admissible? No.

Adducing the Joychild report would add very little to the evidence already heard by the Court. That is because many of those interviewed by Ms Joychild gave evidence at trial. Moreover, the delay in seeking to adduce the report (which was available prior to trial) was not adequately explained. If the report was to be adduced at this late stage, witnesses who gave evidence in 2018 would have to be recalled, risking a re-running of the 2018 trial for very little gain. There were no exceptional circumstances, and it was not in the interests of justice, that the Joychild report be adduced. See [41]–[43], [45], [49]–[52] and [54].

Should exemplary damages be awarded? No.

The Court of Appeal has confirmed that exemplary damages are generally unavailable for vicarious liability. The Court of Appeal has also confirmed that s 6 of the Crown Proceedings Act 1950 means the Crown cannot be sued directly in tort. That may seem unfair, but it is for Parliament to change the law if it sees fit. See [57] and [67]–[71].

The claim that the RNZAF owed a duty of care as an employer (or something similar) is a novel legal claim. Even if such a duty could be established, the evidence falls short of the high threshold for exemplary damages to be awarded in cases of negligence. There is no evidence that the RNZAF consciously appreciated the risks that Mr Roper posed to Ms Taylor and decided to deliberately run those risks. Nor is there any evidence of outrageous, high-handed, malicious, or wilful conduct which would attract an award of exemplary damages for negligence. It was Mr Roper who was the flagrant wrongdoer; not the RNZAF. The fact that processes have been changed in the last 30 years means that an award of exemplary damages would not serve a deterrent purpose either. See [92]–[97].

The Court has every sympathy for Ms Taylor and what she endured at the hands of Mr Roper in the 1980s. However, an award of exemplary damages against the RNZAF cannot be justified on the law and the evidence called at trial. For these reasons, the claim is dismissed. See [100]–[103].