



# Court determines convicted sexual assault perpetrator not liable to pay to compensation to victim

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In a significant decision in November 2024, the NSW Supreme Court has said that it is not a given that a perpetrator criminally convicted of sexual offences will automatically be liable to pay the abuse victim common law damages (compensation). In the case of *MTH v. State of New South Wales* [2024] NSWSC 1517, the plaintiff (the abuse survivor, “MTH”) was suing the estate of the perpetrator, Mr Croft (who died in prison in 2022) for psychological and serious physical injury.

It's an interesting case for a number of reasons, but the focus of this blog is on the aspect of the Court's decision that it was **not** an “abuse of process” to permit the perpetrator's estate to deny the circumstances of the abuse for which he was convicted.

## Facts that led to criminal convictions for sexual offences

The plaintiff first reported the abuse to the police in 2012 (33 years after the alleged year the abuse occurred).

Mr Croft was convicted of three (3) counts of indecent assault and two (2) counts of rape in relation to the plaintiff.

Through the course of the police investigation into the allegations raised by the plaintiff in 2012, at some later stage, the police located another young person (who was identified as RS) who claimed to be another victim of Mr Croft. RS claimed he'd suffered physical and sexual abuse at the hands of Mr Croft when he was 12 years old (approximately two years before the plaintiff's alleged abuse).

Mr Croft was charged and convicted of offences against RS.

Mr Croft always maintained his innocence in respect of both criminal proceedings.

Mr Croft had unsuccessfully appealed his convictions to the NSW Court of Appeal.

Mr Croft died before his application for leave to appeal to the High Court of Australia could be heard/determined.

## The sexual assault victim loses her civil case for compensation

The plaintiff was wholly unsuccessful in her case, which involved allegations against Mr Croft, Mrs Croft, and the State of NSW on the basis that the State was negligent in the management and supervision of the plaintiff as a ward of the state at the material time.

But why was she unsuccessful when the perpetrator was convicted of several criminal offences that involved the same instances of abuse as she pleaded in her civil action?

## The Court's consideration of "abuse of process"

In his reasons for the decision, Justice Cavanagh noted that he had been asked by the parties, in particular the plaintiff, whether permitting the Second Defendant in the matter (the defendant now that the perpetrator is deceased) to deny that he had abused the plaintiff would give rise to an "abuse of process".

After all, the perpetrator had been convicted by a jury of indecent assault and rape. The factual foundation of the plaintiff's damages claim for [abuse compensation](#) involved the facts the subject of these criminal convictions.

The Judge then summarised the abuse of process point at paragraph 55, where he noted:

*The question is whether, having regard to Mr Croft's earlier convictions, it is an abuse of process for (the estate of Mr Croft) to deny the facts underlying those convictions, in these proceedings?*

His Honour then noted that whether a party's defence gives rise to an abuse of process will turn on "all of the circumstances" and involves a "broad, merits-based judgment which takes account of the public and private interests involved".

This is lawyer-speak for "it depends on each individual case".

His Honour then noted, at paragraph 71:

An attempt by a **party** to re-agitate an issue which has already been the subject of litigation and, indeed, the subject of a final judgment could constitute an abuse of process. Such conduct calls into question the principle relating to the finality of litigation'.

The reference to the term “party” seems to have been the focus of His Honour’s determination that it was **NOT** an abuse of process to allow the estate of the late Mr Croft to deny the very abuse he was criminally convicted of.

## The same “parties” cannot re-litigate the same issues in further proceedings

There is a legal concept called “issue estoppel”, and it is essentially the nub of the abuse of process argument in this case. What it essentially provides is that it is not permissible for the **same parties** to re-litigate the same issues.

His Honour concluded that the parties were **not the same** in this instance.

The criminal case involved the Crown Prosecutor against Mr Croft. The civil case involved MTH against Mr Croft.

Other matters were referred to by His Honour in his determination that it was not an abuse of process to allow but it was really the fact that this case involved ‘MTH’ as the party seeking damages from the estate of Mr Croft, and not the Crown Prosecutor that was determinative of his decision to allow the estate to continue to deny the abuse happened at all.

## Inconsistent statements by plaintiff did not help

As it turned out, the plaintiff ‘MTH’ unfortunately was not able to convince the Judge that the abuse occurred on the balance of probabilities”. She unfortunately didn’t do herself any favours in making numerous inconsistent statements (in and out of court), which left the Judge unable to have a feeling of ‘actual persuasion’ that the abuse she said she experienced at the hands of Mr Croft actually occurred.

## Get help from an abuse compensation lawyer

Whilst the majority of cases involving claims for damages/compensation for child sex abuse, do not involve defendants who have been criminally convicted of the same allegations of abuse, this case does highlight the need for abuse survivors to exercise some care in reciting the details of the nature and extent of the abuse they suffered as a child.

Somewhat ironically, this tends not to be an issue in most cases involving child sexual abuse allegations, as survivors do not tend to be forthcoming in describing the abuse they suffered to anyone until they decide to seek appropriate legal assistance.

Getting the right legal assistance to make sure issues such as what arose in this case don’t crop up is critical to maximising prospects of being successful in recovering the compensation that survivors of abuse are entitled to.

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