

**BEFORE THE ACCIDENT COMPENSATION APPEAL AUTHORITY  
AT WELLINGTON**

**[2013] NZACA 17**

**ACA 13/12**

**IN THE MATTER**

of the Accident Compensation Act  
1982

**AND**

**IN THE MATTER**

of an application for an adjournment  
pursuant to s 110(3) of the  
Accident Compensation Act 1982

**BETWEEN**

**LISA ANNE GILL**  
Appellant

**AND**

**ACCIDENT COMPENSATION  
CORPORATION**  
Respondent

**HEARING:** 28 November 2013

**AUTHORITY:**  
Robyn Bedford

**COUNSEL:**  
C Hollingsworth for appellant  
P McBride for respondent

**DECISION SETTING ASIDE INTERLOCUTORY DECISION TO DECLINE TO GRANT  
AN APPLICATION FOR ADJOURNMENT MADE BY THE APPELLANT**

[1] The appeal concerns an application for compensation under s 80(3) of the Accident Compensation Act 1982, made by Ms Gill's parents on her behalf.

[2] Following my comments at the conclusion of her submissions that it is extremely hard to displace specialist evidence through affidavit evidence and criticism by counsel, Ms Hollingsworth applied for the hearing to be adjourned part so that the appellant could obtain the necessary specialist evidence to support the application

[3] Mr McBride opposed the application on the ground that first, the Authority had made directions for the filing of this evidence in May 2013. Although Ms Hollingsworth notified the Authority on 8 May 2013 that specialist evidence would be obtained, she had elected instead to rely solely on an affidavit by Ms Gill's mother, Linda Ruth Gill sworn 25 October 2013, in which Ms Gill deposed to various matters that were covered in the two assessments by Ms Andrews that ACC relied upon to decline the application. Secondly, submissions had been exchanged and ACC's arguments disclosed and this would give the appellant an unfair advantage when seeking the specialist evidence.<sup>1</sup>

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<sup>1</sup> I note that Mr McBride acted on the review and ACC's submissions were substantially disclosed to the appellant at this time.

[4] I declined to grant the adjournment because I took the view that counsel had been put on notice by the Authority that specialist evidence would be required in light of Ms Andrew's recommendations. The decision was made to proceed without this evidence and it was too late to seek an adjournment once the hearing was underway and it became apparent to Ms Hollingsworth that the appeal was likely to fail as the evidence then stood.

[5] I also considered that fact that I am resigning my membership of the Authority on 31 March 2014, and it would be inconvenient to adjourn the appeal part heard as the hearing would not be reconvened until well after this date.

[6] Neither counsel referred me to any case law or any relevant statutory provisions, however I have now had time to reconsider the appellant's situation in light of s 110(3), which provides the only statutory power under Part 9 of the 1982 Act for the Authority to grant an application for an adjournment of a fixture.

[7] The overriding consideration is the interests of justice. If the appellant had been an adult at the time of her injury and had brought her own claims and made her own election not to obtain specialist evidence, then it would be reasonable to expect her to bear the legal consequences of her choices. However, the appellant was seriously and severely injured soon after birth, she cannot communicate and she cannot run her own affairs and she is entirely dependant upon her parents and the lawyers they instruct to promote her claim for what is, potentially, a significant amount of compensation.

[8] In light of this, it would in my view be contrary to the interests of justice to allow my decision to stand and I have therefore recalled the decision of my own motion. In doing this, I have applied s 108(11), which provides that the procedure of the Authority shall, subject to the Act, be as the Authority determines and s 108(10), which provides that proceedings before the Authority shall not be held bad for want of form.

[9] Section 110(3) provides that where an application is made for an adjournment and the Authority, in the interests of justice, considers that the adjournment should be allowed but that the adjournment will cause inconvenience to the any person, including the Authority, the Authority may order the party requesting the adjournment to pay such costs as it considers reasonable.

[10] In view of the obvious inconvenience to the Corporation and to the Authority I would normally order costs against the responsible party, but for the same reasons that I noted at paragraph [7], it would not be appropriate in this case and there will be no order as to costs.

[11] Section 110(3)<sup>2</sup> does not on the face of it allow the Authority to order costs against a non-party, and were it not for this, I would have considered making a costs award against Ms Hollingsworth's employer, John Miller Law.

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<sup>2</sup> There is no equivalent to Rule 45(1) of the District Courts Rules and I am not aware of any costs decisions made by the Authority where costs have been awarded against a non-party.

*Directions*

[12] A telephone conference will be convened as close to 20 December 2013 as is convenient for counsel, to discuss the appellant's progress with instructing the appropriate specialist and the expected time frame for the receipt of the specialist evidence.

[13] If no steps have been taken in relation to the specialist evidence, then the appellant will be treated as having elected to proceed on the basis of Ms Hollingsworth's submissions and her mother's affidavit and a decision will issue on the substantive appeal as it has been heard to date.

[14] If the necessary steps have been taken, then Ms Hollingsworth will be expected to advise the Authority when the evidence will be filed and served and to have worked out a timetable with Mr McBride for the obtaining and filing of any second opinion comment for ACC and for supplementary submissions by both parties.

[15] Given the inconvenience caused to date through the decision not to instruct a specialist before the hearing, the timetable orders will be made so as to minimise any further inconvenience to Mr McBride and ACC.

**DATED** at WELLINGTON this 9<sup>th</sup> day of December 2013

Robyn Bedford