

**‘NEILLIN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**[2022] NZACC 181      ACR 119/20**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	C O’NEILL Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing      On the papers

Submissions:      The Appellant is self-represented  
B Johns for the Respondent

Judgment:      20 September 2022

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**JUDGMENT OF JUDGE P R SPILLER**  
**[Leave to appeal to the High Court, s 162 Accident Compensation Act 2001]**

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**Introduction**

[1] Mr O’Neill has filed a late application for leave to appeal a judgment of Judge C J McGuire dated 4 July 2022.<sup>1</sup> The primary issue in the appeal was whether the reviewers were wrong to find that there were no reviewable decisions in respect of review numbers 6540240, 6599693, and 6596703. A related issue was whether Mr O’Neill had a valid claim for cover for his right eye injury, and if so whether the Corporation had failed to make a decision on that claim within the statutory time frame. Judge McGuire dismissed the appeal. On 10 August 2022, Mr O’Neill lodged an application for leave to appeal Judge’s McGuire’s decision.

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<sup>1</sup> *O’Neill v Accident Compensation Corporation* [2022] NZACC 127.

[2] Mr O'Neill's application for leave to appeal was dated 6 July 2022. Mr O'Neill states that he posted his application to the District Court Registry immediately after completing the application. He notes that he does not use a computer or send emails. He submits that the fact that the Registry did not receive his application within the deadline for lodging was beyond his control.

### **Relevant Law**

[3] Section 162(1) of the Accident Compensation Act 2001 provides:

- (1) A party to an appeal who is dissatisfied with the decision of a District Court as being wrong in law may, with leave of the District Court, appeal to the High Court.
- (2) The leave of the District Court must be sought within 21 days after the District Court's decision.

[4] In *Siola 'a*,<sup>2</sup> O'Regan J for the Court of Appeal stated:

[17] ... Section 162(2) requires not only that leave be sought under Part 5 of the District Courts Act but also that this be done within 21 days of the relevant decision. If leave is sought after that 21 day period has elapsed, the inescapable conclusion is that the second requirement of s 162(2) has not been complied with.

...

[19] Nor do we consider that NZBORA [New Zealand Bill of Rights Act] is engaged in this case. We reject the notion that s 27(2) of NZBORA mandates a second appeal (or at least an opportunity to seek leave for one) notwithstanding non-compliance with the time limit for seeking leave, given that the original (ACC) decision has already been subject to a full merits appeal to the District Court. Equally, we do not accept that the requirement to file applications for leave within 21 days of the decision of the District Court is more "punitive" than the regime under s 71A(4) for other District Court appeals as Mr Beck described it. There is nothing onerous in a 21 day time limit: indeed it is a reasonably standard requirement.

...

[33] ... If, in a case such as the present, ACC is prepared to waive the non-compliance with the time limit and does so, then the District Court would have jurisdiction to consider and decide the application. So, until a Judge decides that the leave application should be struck out, there is an application before the Court which requires a judicial decision to determine it. In cases where no question of acquiescence or waiver arrives, that decision will be obvious. The decision to strike out the leave application could simply state that, in the

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<sup>2</sup> *Siola 'a v Wellington District Court* [2008] NZCA 483, [2009] NZAR 23.

absence of acquiescence or waiver, the lateness of filing deprives the Court of jurisdiction to hear the application.

### **Discussion**

[5] This Court notes that Mr O'Neill's application for leave to appeal was lodged 37 days after Judge McGuire's decision. The law as outlined above is clear:

- (a) the leave of the District Court to apply for leave to appeal must be sought within 21 days after the District Court's decision in question, and
- (b) lateness of filing deprives the Court of jurisdiction to hear the application, unless
- (c) the Corporation waives non-compliance with the time limit.

[6] In this case, the Corporation has waived Mr O'Neill's non-compliance with the time limit. Ms Johns notes that it appears that Mr O'Neill's delay in the Court receiving his leave to appeal application may have been with the mail system or possibly with the Court. The effect is that this Court has jurisdiction to hear Mr O'Neill's application.

[7] This Court agrees with the Corporation's observation and waiver of non-compliance. There is a real possibility that the delay in the Registry receiving Mr O'Neill's application was beyond his control. In the interests of justice being done and being seen to be done, Mr O'Neill should be allowed to file his application for leave to appeal out of time.

### **The Decision**

[8] In light of the above considerations, the Court finds that it has jurisdiction to entertain Mr O'Neill's application for leave to appeal, and that he has established grounds to support being granted leave to file his application late. His application may therefore proceed to be decided.

[9] There is no issue as to costs.

A handwritten signature in dark ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller  
District Court Judge