[2013] NZACA 4

ACA 1/09

IN THE MATTER	of the Accident Compensation Act 1982
AND	
IN THE MATTER	of an appeal pursuant to s.107 of the Act
BETWEEN	**ROBERT WOOD**
	Appellant
AND	**ACCIDENT COMPENSATION CORPORATION** a body corporate duly constituted under the provisions of the said Act
	Respondent

BEFORE THE ACCIDENT COMPENSATION APPEAL AUTHORITY

R Bedford

HEARING: 14 February 2013 at Auckland

APPEARANCES:

M Darke advocate for appellant
F Becroft counsel for respondent

DECISION:

DECISION ON JURISDICTION

[1] On 8 January 2009, Mr Wood filed an application for leave to appeal out of time against a review decision issued in 1988, which upheld a 1987 decision of the Corporation to suspend payments of earnings related compensation because his loss of capacity to earn was no longer caused by his personal injury.

Mr Wood's claim

[2] Mr Wood suffered a head injury on 14 March 1985. His claim for cover and entitlements was accepted by ACC in June 1985 (the 1985 decision). Mr Wood was an earner at the date of injury. He was paid earnings related compensation (ERC) of $11,202.48 for unknown periods until November 1987, when ACC suspended his compensation, apparently on the basis of a medical opinion from Dr Culpan, a psychiatrist, that his loss of capacity to work was no longer caused by his covered personal injury (the 1987 decision).

[3] Mr Wood applied to review this decision and the review was decided at some time in 1988 (the 1988 decision). The Review Officer upheld the 1987 decision and Mr Wood elected not to file an appeal. In around 1991, Mr Wood was paid lump sum compensation under ss 78 and 79 and his file was archived.

[4] In 1997, Mr Wood approached ACC to ask for compensation to be paid and backdated to the date of his accident. ACC re-opened Mr Wood's claim. ACC had retained "*a prints only*" copy file, but nonetheless this still should have confirmed his basic ERC payment details and the first and last dates of payment. Nothing has been produced at any stage to show what exactly ACC had retained and it appears that Mr Wood subsequently provided the medical reports "*to confirm injury and ongoing effects*."

[5] It should have been evident at this point that Mr Wood's claim should have been considered under the 1982 Act as an application for reinstatement of ERC that had ceased in November 1987, because that is the only possible application it could be on the facts. However, ACC treated Mr Wood as making his first application for what was by then, weekly compensation under the Accident Rehabilitation and Compensation and Insurance Act 1992, to be backdated to 1985.

[6] By 13 August 1997, ACC had accepted Mr Wood's ongoing incapacity was caused by the 1985 injury, and it decided that his past and his ongoing treatment costs should be approved. However, the ACC officer who was investigating the claim considered that there was insufficient financial information to allow for payment of weekly compensation and recommended declining Mr Wood's application because ACC could not get "*exact and correct details of earnings pre and post injury…without which weekly compensation could not be calculated*."

[7] The decision letter, which was written the same day, said that Mr Wood's application for weekly compensation from 1985 was declined because ACC needed verification of his pre and post accident earnings, but he was entitled to continued medical treatment costs. The right of review was given under the 1992 Act (the 1997 decision).

[8] The fact that the 1997 decision declined Mr Wood's application for compensation from 1985 without correcting the earliest date from which compensation could be paid to November 1987 and applied the wrong Act for considering his entitlement and giving the right of review, set the scene, along with Mr Wood's poor recollection of events, for the next six years of litigation.

Litigation: 1998 - 2003

[9] Mr Wood applied to review the 1997 decision. Mr Carter, who described himself as a "*Review Officer*" (as provided under s 102 of the 1982 Act), said he was conducting a review under the 1992 Act, but then correctly applied ss 53(2) and 59 of the 1982 Act, because that Act was in force at the time of Mr Wood's incapacity.[1]

[10] Mr Carter said that the issue for determination was whether Mr Wood should be paid backdated compensation from the date of his accident in 1985. In his decision issued in January 1998 (the 1998 review decision), Mr Carter said at page 7, that by implication, ACC may have accepted that Mr Wood had been wholly or partially

[1] Review decision 14/1/97, p 6

incapacitated for long periods by the 1985 injury and that the ACC decision was based solely on the lack of financial information which would allow ACC to determine the relevant pre-accident earnings and then entitlement and abatement.

[11] Mr Carter went on to say:

> "*I acknowledge that head injuries can sometimes be difficult cases because sometimes people are not diagnosed straightaway or in a position adequately to manage their own affairs after a head injury. But notwithstanding this, there is the lack of ongoing medical certification, which is another usual pre-requisite for ERC/weekly compensation to be paid, though other forms of certification i.e. specialists' reports can be used*."

[12] Mr Carter said, in the context of describing Mr Wood's case as more seeking a settlement for the way in which the Panmure branch had dealt with his claim, that it was not ACC, but the medical profession as a whole which was apparently not able to find even a partial solution to his problems until he went to the cranial osteopath.

[13] Mr Carter should have given the right of appeal to the Authority pursuant to s 152 of the 1992 Act, but the decision was silent on appeal rights. An appeal was filed in the District Court and the decision in *Wood v ACC* Decision No.274/98, was delivered on 18 December 1998 (the 1998 appeal decision). The issue on appeal was stated by Middleton DCJ, as being whether Mr Wood was "*entitled to receive backdated weekly compensation in respect of personal injury by accident which occurred on 14 March 1985*." No period of claimed entitlement was specified.

[14] The original medical reports had been produced, and Judge Middleton recorded Mr Tui's submissions for the respondent that Mr Wood had received earnings related compensation from 1985 of $11, 202.48 until it was ceased some time at a date now unknown following the report from Dr Culpan, that Mr Wood had applied for a review of the decision to cease payment, and there was no doubt that the decision was upheld on review and that Mr Wood had not appealed it.

[15] Middleton DCJ recorded Mr Tui's submission that Mr Wood had to show that he was incapacitated by reason of the personal injury down to the present time. The medical evidence was traversed for the period from 1986 to 1995 and Dr Culpan's report was noted as being supported by another psychiatric report in 1990, and a neurological report in 1991.

[16] Judge Middleton determined the appeal on the basis of the medical opinions, which formed the major part of his discussion. In his decision proper, Middleton DCJ said:

> "*I agree with the Review Officer that notwithstanding the doubts raised by the medical evidence it would be extremely difficult to now formulate an accurate assessment of entitlement to weekly compensation because of the lack of financial records. I accept that the appellant was in receipt of $13 per hour at the time of his accident and that it was probably on this basis that earnings related compensation was initially paid. However, since the assessment, there has been a considerable gap and it further appears that in between the time of the accident and 1990, the appellant undertook some other part time work. While I make these observations they are not necessary to the determination of the appeal because I consider that on the basis of the available medical*

> *evidence the appellant has not established, on the balance of probabilities, that the problems he now suffers are the result of the accident in 1985. The appeal is dismissed*." (emphasis mine)

[17] Mr Wood has not given evidence for this application, but I can easily see how he would have been confused by the reversal of the issues, particularly as Judge Middleton decided the only issue on appeal that he had any apparent jurisdiction to consider, in his favour. In any event, Mr Wood did not apply for leave to appeal the decision to the High Court, and from January 1999 to September 2001, when he finally sought legal advice, Mr Wood unsuccessfully tried to convince ACC to revisit the 1997 decision either on the basis of the finding that he was paid $13.00 per hour at the date of the accident, or on the basis of new medical evidence.

[18] In November 2001, Mr Wood's then lawyer, Ms Barr, made an application to the High Court for judicial review and asked for directions on ACC's powers of revision under s 452 of the 1998 Act in the light of new medical evidence and an order for a new decision from ACC with review and appeal rights. On 12 March 2002, ACC proposed to settle the judicial review application by issuing a new decision regarding Mr Wood's compensation with rights of review under ACC's review and appeal process, in exchange for Mr Wood withdrawing the application. This was without prejudice to ACC being able to reserve and rely on, the estoppel argument. ACC's position was that:

[a] if Mr Wood sought re-instatement of entitlements from the date they were ceased (i.e. in or about 1987), then ACC was estopped from considering the matter because of the review decision issued in about 1987;

[b] entitlement from any date in between then and the decision of 13 August 1997 was also estopped because of the District Court appeal decision; and

[c] this left the period post the 1997 decision, which ACC would consider based on the medical evidence currently available and other relevant considerations would also apply.

[19] The settlement proposal was accepted and the ACC decision letter was issued on 1 May 2002 (the 2002 decision), with the right of review to the District Court and stated:

> "*Our decision letter dated 13 August 1997 declined to reinstate weekly compensation on the basis that earnings information pre & post incapacity could not be determined and therefore the Corporation could not accurately calculate your weekly compensation. This was further to a decision to stop weekly compensation in about 1985.*
>
> *We are therefore issuing a new decision today, as agreed in the settlement of the judicial review proceedings, declining to revisit the 1985 decision on the basis that this issue has already been judicially determined and that the principal of 'issue estoppel' applies*".

[20] The 2002 decision gave the right of review under the 2001 Act, which by this time had replaced the 1998 Act and Mr Wood made an application for review through his lawyer, Mr Plumridge, and sought backdated payments to 1985. The Reviewer

conducted the review under s 65 of the 2001 Act, which by this time had replaced s 73 of the 1998 Act.

[21] In her decision issued on 22 October 2002 (the 2002 appeal decision), Ms Clark found that the decision at issue in the review was the same as in the 1998 appeal decision and that s 65 of the 2001 Act, could not apply, as it was not ACC's decision that was at issue on the review. Ultimately, as it was the decision of Judge Middleton that Mr Wood was seeking to overturn and as the matter had been judicially determined and was not appealed to the High Court, the issue was now estopped from further determination. Appeal rights were given to the District Court.

[22] In November 2002, Mr Plumridge filed a notice of appeal in the District Court, which was heard by Cadenhead DCJ under the 1992 Act, following the agreement by counsel that this was the correct Act to apply. The decision in *Wood v ACC* Decision No.80/2003 (the 2003 appeal decision) was delivered on 7 May 2003.

[23] Cadenhead DCJ described the "*Scope*" of the issues raised in the appeal at paragraph [15] as follows:

> "*In this respect it will be noted that what the appellant is claiming is an ability to review the issue of compensation back to the termination in 1987…what is being sought is a review of the original decision to decline compensation*."

[24] This was the first time that Mr Wood's claim was identified as being an application for reinstatement of compensation from when it ceased in November 1987, and the wording suggests that Cadenhead DCJ did not apprehend that this decision had already been the subject of a review under the 1982 Act.

[25] In deciding the issue, Cadenhead DCJ and said that it was necessary to consider the principles of cause of action estoppel, and he discussed the applicable principles at paragraphs [18] and [19]: it was narrower than issue estoppel, and the cause of action had to be precisely the same as that upon which there had been an earlier determination. Issue estoppel, on the other hand, precluded a party from contending the contrary of any precise point which, once being distinctly put in issue, has been solemnly and with certainty been determined against the party.

[26] At paragraph [24] Cadenhead DCJ repeated the last four paragraphs of Judge Middleton's appeal decision in which he had recorded the 1988 review and the appellant's acceptance of the 1988 review decision. At paragraph [25], Cadenhead DCJ said that the ratio of Judge Middleton's case was:

> "… *that he considered on the basis of the available medical evidence the appellant had not established on the balance of probabilities that <u>the problems he then suffered</u> were the result of the accident in 1985. His comments in respect of difficulties of formulating an accurate assessment to an entitlement to weekly compensation because of the lack of financial records were not necessary to his decision, and he specifically says that. The scope of his decision is therefore entirely within the present issue sought to be litigated by the appellant. In my view, the appellant is seeking to litigate a cause of action that has already been decided against him*." (emphasis mine)

[27] Cadenhead DCJ did not make the finding that the cause of action was precisely the same, or even that the issue was the precise point that had been distinctly put in

issue in the 1998 appeal, and the "*scope*" of the 1998 appeal decision being "*entirely within the present issue*", should not in my respectful opinion, have been sufficient to support estoppel in either sense.

[28] Mr Wood chose not to appeal to the High Court and instead pursued his possible post 1997 weekly compensation entitlement in line with the settlement proposal letter of 12 March 2002. In August 2003, ACC agreed to pay backdated compensation from 13 August 1997, and ongoing. In 2008, Mr Darke was instructed and he raised the 1982 Act with ACC as the Act under which Mr Wood's compensation should have been considered. Mediation was arranged to look at all the issues, but ACC again declined to revisit the original 1987 decision or the 1988 review decision.

[29] In January 2009, Mr Darke filed an application with the Authority for leave to appeal the 1988 review decision and the 1997 decision was referred to only as ACC having accepted that there was incapacity from the 1985 injury. The 1998 and 2003 appeal decisions were filed in September 2009. Relying on the Authority's powers under s 108(9) to determine its own procedure, Mr Darke asked the Authority to either direct the Corporation to make a new decision under the 1982 Act, or accept that there was a decision in 1987 and conduct a new review hearing.

[30] There is no indication on my file whether Mr Cartwright acted on this request, but Mr Darke filed submissions in support of the application in March 2010. In March 2012, Ms Becroft, filed submissions to challenge the Authority's jurisdiction on the grounds first, that it arises out of a review decision under the 1982 Act and there was no hard evidence of such a decision in this case and thus nothing on which to found the Authority's right to entertain an appeal. Secondly, even if the Authority accepted that a review decision issued in the 1980s, estoppel arises to prevent the issue being re-litigated; and, thirdly, that irrespective of the correct jurisdiction, the Authority was not competent to determine the validity or otherwise of a District Court decision as this could only be done by way of appeal to a superior, not a concurrent, jurisdiction.

[31] By consent, the application for leave to appeal out of time was deferred until the challenge to the Authority's jurisdiction had been dealt with as a preliminary question.

The case for the appellant

[32] Mr Darke pointed out the inconsistency in ACC's new challenge to the existence of the 1988 review decision, as, if there was no reasonable evidence of the 1988 review taking place, then this undermined its decision in May 2002, that it was estopped from considering paying backdated compensation from 1987 – 1997, because of that unchallenged review decision. He did not, however suggest that the issue in 1988 review decision was not the same as in the 1998 review decision, and proceeded on the assumption that issue estoppel was properly raised, not withstanding the confusion he had identified around the content and timing, but could not succeed because of the fatal jurisdictional flaw.

[33] Mr Darke focussed on the 1982 Act, which he submitted was clearly the correct Act to apply to determine jurisdiction, as the decision at issue was made in 1987 under the 1982 Act. By law, the District Court could not enter into any consideration as to whether the 1987 decision suspending entitlements was correct, because the 1982 Act reserved the right of appeal against a review decision made under s 102, only to the Authority pursuant to s 107. Mr Darke submitted that as the primary

decision and the review decision were issued under the 1982 Act, Mr Wood had a right of appeal under that Act, and is therefore entitled, with leave, to now have the application for leave to appeal out of time determined by the Authority under that Act. The terms of s 391(1) of the 2001 Act are quite specific that any review or appeal of any decision made under the 1982 Act must be held under the 1982 Act.

[34] Mr Darke said that the District Court had been asked to look at whether the 1987 decision was correct, when there was no jurisdiction for it to make such a determination on appeal under the 1992 Act, and the statutory regime under that Act disadvantaged Mr Wood. Once it was accepted that the 1987 decision must be dealt with under the 1982 Act, then by virtue of s 101 of the 1982 Act, which provides that where a remedy by way of review or appeal is provided under Part IX of the Act, no other remedy shall be available, the District Court was not a court of competent jurisdiction and any argument that it could have made a decision on entitlement for the 1987 – 1997 period, must fade away.

[35] Whichever way the matter is approached, Mr Darke stressed that the District Court decisions were made without jurisdiction and as such, were not binding on the Authority. *Res judicata* or estoppel could not, therefore, apply to deny Mr Wood the right to have his entitlement to earnings related compensation under the 1982 Act determined by the Authority, as it is the only judicial body of competent jurisdiction and cannot bound by any decisions of the District Court made in excess of its jurisdiction.

[36] Mr Darke relied upon the 1923 Supreme Court decision in *New Zealand Waterside Workers' Federation Industrial Association of Workers v Fraser*[2], where the Court held that an award of the Arbitration Court was subject to examination by the Supreme Court because although the s 96 of the Industrial Conciliation and Arbitration Act provided that no award or order made buy the Arbitration Court could be reviewed, quashed or called into question by any Court of judicature on any account whatsoever, the industrial award made was in excess of its jurisdiction. The Supreme Court determined that the ousting provision could only contemplate an error of law or fact, or irregularity of procedure, or defect of form or substance, but once the Arbitration Court exceeded the jurisdiction assigned to it, it became subject to the scrutiny of the Supreme Court in its role of keeping all other courts within the scope of their jurisdiction.

[37] Mr Darke urged me to effectively take on the same role in the present case, as once the District Court exceeded its jurisdiction by hearing the appeal, the resulting decision lost the legitimacy that the doctrine of *res judicata* or estoppel would otherwise preserve.

The case for the Corporation

[38] Ms Becroft did not resile from her submission that "*The parties have no information in regards the primary decision presumed to have been issued in or around 1997, or in regards to any review decision that may have followed*", but at the hearing, Ms Becroft conceded that the 1988 review decision was found by Middleton DCJ to have been made, so in all likelihood, there was a review decision. This effectively, and correctly in my view, disposed of the first challenge to the Authority's jurisdiction, but still left the objection with respect to issue estoppel unclear,

[2] [1924] NZLR 689

depending as it does on the issues in the 1988 review decision and the 1998 appeal decision being identical, and distinctly put in issue.

[39] However, notwithstanding that the Authority may have technical jurisdiction to hear an appeal against the 1988 review decision, Ms Becroft maintained that this was still subject to the doctrine of *res judicata* and estoppel by virtue of the 1998 and 2003 appeal decisions. Irrespective of the rights or wrongs of the situation, the decisions had been made, they had not been appealed and they were binding.

[40] Ms Becroft said it is irrelevant that the matter has been determined in another jurisdiction, not the Authority, because the District Court is still a court of competent jurisdiction and as such, its decision has finally determined the question Mr Wood now seeks to litigate before the Authority. Ms Becroft submitted, however, that even if the District Court was not competent, then the Authority was barred from determining this because it was not a superior court. This was based on Ellias CJ's comment in *Chamberlains v Lai*,[3] which, Ms Becroft submitted, was that a decision of the court can only be challenged by appeal to a superior court. Ms Becroft also referred me to the Chief Justice's citation of a passage from Somer J's decision in *New Zealand Social Credit Political League Inc v O'Brien*[4]*:*

> "… *that a matter once determined must not be again litigated, that a matter which could and should have been raised in proceedings which have been determined should not be allowed to be raised subsequently, and that a collateral attack upon a final decision in other proceedings will not be permitted. The dual objects are finality of litigation and fair use of curial proceedings*."

[41] Ms Becroft quoted a passage from *Z v Dental Complaints Assessment Committee*[5], where Elias CJ at paragraph [61] discussed the general public interest in the same issue not being litigated over again. This was, however, in the context of an appeal concerning the intersection between criminal prosecution and professional disciplinary action taken under statutory authority, not the concurrent appellate jurisdiction enjoyed under compensatory statutes.

[42] Ms Becroft argued that the decisions the Authority had said counsel should be prepared to discuss, could not help Mr Wood. Cases such as *Shiels v Blakely, Hill v Hayman* and *Nash v Nelson District Court*[6], which respectively held that competence was an essential ingredient of res judicata, the lack of jurisdiction deprives a decision of effect, and that anything more than minor jurisdiction errors or defects could not be waived by the parties, were not relevant because the Authority could not do anything even if the two District Court appeal decisions were considered to be invalid.

[43] Ms Becroft submitted that the findings of the District Court are binding and the only challenge that Mr Wood could make in respect of the 1988 review decision, was by way of an appeal to the High Court from the District Court.

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[3] *Chamberlains v Lai* [2006] NZSC 70; I note that at para [58], Elias CJ actually said that "*In general, a decision of a court can be challenged only by appeal to a superior court". The principles of finality familiar to our law are rules of public policy based on considerations of fairness to litigants and the need to bring litigation to an end*".

[4] *New Zealand Social Credit League Inc v O'Briens* [1984] 1 NZLR 84

[5] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55

[6] *Shiels v Blakely* C.A. 60/85, *Hills v Hayman* [1952] NZLR 655; *Nash v Nelson District Court* [2000] 3 NZLR

Issues

[44] In order to invoke *res judicata* the party to the original proceedings must satisfy a number of constituent elements outlined in *Shiels v Blakely* and where a proceeding does not contain all of the elements, the presiding court is not estopped from determining the matter. Those elements are:

[a] The decision relied upon was a judicial decision;

[b] The decision was made pronounced by a judicial court or tribunal;

[c] The judicial court or tribunal had competent jurisdiction in that behalf;

[d] The judicial decision was final;

[e] It was a determination of the same question as that sought to be controverted in the litigation in which the estoppel is raised, or the decision involved the same question;

[f] The parties are the same; and

[g] The decision was conclusive or in *rem personam*.

[45] In addition the case mounted by ACC involves an assessment of whether the Authority is competent to determine the validity or otherwise of the two appeal decisions made by the District Court.

[46] From my point of view the issues are somewhat wider, as it is by no means certain that the District Court did determine the exact and precise cause of action or issue as determined in the 1988 review decision. There is also a question as to whether the Authority can properly refuse jurisdiction to hear an appeal against a review decision under the 1982 Act, in the absence of abuse of process?

Discussion

[47] I agree with Mr Darke that if it purported to determine the very same matter at issue in the 1988 review decision, the District Court acted outside its jurisdiction. Even without the unbroken chain in the various transitional provisions that preserves the jurisdiction of the Authority under Part IX of the 1982 Act, from s 152 of the 1992 Act, to s 543(1) of the 1998 Act through to s 391(1) of the 2001 Act (the transitional provisions), both sides accept, and would be hard pressed to do otherwise, that an appeal against a decision made on a review held under s 102 of the 1982 Act, can only be validly heard under the 1982 Act.

[48] I don't agree that the cause of action determined in the 1998 appeal has been proven to be the precise and identical cause of action as that determined in the 1988 review. Not only did Ms Becroft undermine this proposition by her submissions that the 1988 review decision was completely shrouded in mystery, Middleton DCJ muddied the waters by using the phrase "*the problems he now suffers*" in regards to the necessary medical evidence and the standard of proof. This, to my mind, is at least as capable, if not more so, of being a finding relating to Mr Wood's situation in 1997 and 1998, as it is to his situation 11 years earlier.

[49] This would seem to leave the proof required in both paragraphs (c) and (e) of the essential elements of *res judicata* somewhat lacking, but it does not answer the objection to the competence of the Authority to accept jurisdiction to hear such an appeal in the face of an invalid, but final, District Court.

[50] I am unable to accept Ms Becroft's argument that it is irrelevant that the District Court did not have jurisdiction in Mr Wood's case, as it is an essential element of *res judicata* that the deciding judicial body is competent. And it must be contrary to public policy to deny Mr Wood access to the rights protected under s 27 of the New Zealand Bills of Rights Act 1990, and inconsistent with decisions in the ACC jurisdiction such as *Ambrose v ACC* (2007) 1 NZLR 340 (CA), when it is abundantly evident that the District Court was not, and never could be, competent to determine an appeal under the 1982 Act.

[51] And nor do I accept that only a superior court is competent to scrutinize the 1998 and 2003 appeal decisions, as this is not the import of Elias CJ's dicta at paragraph [57] of *Chamberlains*. Her Honour in fact said only that it is a general rule, and it follows that there are circumstances where it may be appropriate and desirable for a court or judicial authority or tribunal to determine the validity of a decision made by another judicial body in the same jurisdiction, or by one of equivalent status in so far as their appellate jurisdiction is concerned. But, does this mean that the Authority should assume the role of gatekeeper for the District Court?

[52] In my view, when competing public interest considerations are weighed, the balance favours maintaining the two co-existing ACC appellate jurisdictions as separate and distinct judicial entities, without either being able to assume the role of ensuring that the other remains at all times within what it considers to be the other's sphere of competence. The Authority is empowered to determine it own procedure by s 108(9) of the 1982 Act and the District Court's procedure is governed by the appeal provisions of the applicable Acts and the District Court Rules. There is nothing in any of these enactments to indicate the Parliament intended to create any power for either to interfere in or ignore, the other's final decisions.

[53] Both ACC appellate jurisdictions provide the right of appeal to the High Court and therefore, this court is best placed to exercise its specific statutory jurisdiction to scrutinise decisions made by the Authority and the District Court, to ensure that they do not stray from the scope of their jurisdiction. It is always possible, and indeed, desirable, for either to make a decision concerning the jurisdiction in which an appeal should be heard in respect of any review decision that is filed in their own registry, but once a final decision has been issued that determines the appeal, or purports to do so, that option is spent and replaced by the right of appeal to the High Court.

[54] But where does that leave Mr Wood? He has not been well served, not just because the 1988 review decision has not been determined under the applicable legislation by a court of competent jurisdiction, but also because the 1998 review decision has not been decided by a court of competent jurisdiction either. It has instead been "*hijacked*" by what was in reality, an unrelated medical question that had not been put in issue by ACC and which was neither relevant, nor necessary, to the 1997 primary decision that was before the court.

[55] In my view, the interests of justice require that not only should the 1988 review decision ultimately be considered and determined by the only tribunal of competent jurisdiction, being the Authority, but so too should the 1998 review decision: by virtue

of the transitional provisions, the 1997 decision also falls to be decided under the 1982 Act and attracts the rights of review and appeal under Part IX of the 1982 Act.

[56] I am satisfied that any consideration by the District Court or the Authority of the 1998 appeal must involve the consideration of the primary decision and the review decision that gave rise to the appeal, and that I may properly take those decisions into account in my own decision.

Decision

[57] The primary decisions issued by the Corporation in 1987 and 1997, and the review decisions of 1988 and 1998 all properly fall to be considered under the Accident Compensation 1982 and to attract the rights of review or appeal under Part IX of the 1982 Act.

[58] Until such time as the parties may agree to an informal process to lawfully transfer jurisdiction to the Authority, the Authority declines to hear any appeal arising from any of the decisions, unless the jurisdiction to do so has first been determined by the High Court.

[59] The appeal has been partially successful. If the parties cannot agree to appropriate costs to be paid to the appellant, then memoranda are to be filed promptly.

DATED at Wellington this 21st day of March 2013

Robyn Bedford
Accident Compensation Appeal Authority