

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 81**

**ACR 42/20**

UNDER THE ACCIDENT COMPENSATION ACT 2001  
IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF THE  
ACT  
BETWEEN JENNA ROGAN  
Appellant  
AND ACCIDENT COMPENSATION  
CORPORATION  
Respondent

Hearing: 21 April 2022  
Held at: Auckland/Tāmaki Makaurau  
By AVL

Appearances: S Macann for the appellant  
H Evans for the respondent

Judgment: 6 May 2022

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**JUDGMENT OF JUDGE P R SPILLER**  
**[Late filing of an appeal to the District Court –**  
**s 151, Accident Compensation Act 2001]**

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**Introduction**

[1] The appeal in the above matter was lodged by Ms Rogan on 26 February 2020. The appeal is from the decision of a Reviewer dated 20 October 2019. The Reviewer dismissed an application for review of the Corporation's decision of 4 March 2019 suspending Ms Rogan's entitlement to weekly compensation.

[2] On 3 March 2020, Judge Henare issued an Initial Minute which directed that Ms Rogan formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late.

[3] Ms Rogan does not appear to have formally applied for leave to file the appeal out of time setting out the reasons why the appeal was filed late. However, in the Notice of Appeal, Ms Rogan apologised for the late submission of the appeal, and stated that the late lodging was because she was not able, at the time, to afford the cost.

[4] On 30 November 2021, counsel for the Corporation stated that it did not take any issue with the late filing.

[5] On 21 April 2022, this appeal, together with the appeal ACR 137/21, also brought by Ms Rogan and lodged in time, were called for hearing, with Mr Macann appearing for Ms Rogan and Mr Evans appearing for the Corporation. The Court afforded Mr Macann the further opportunity of explaining why this appeal (ACR 42/20) was filed late. The Court then advised that it would hear the merits of both appeals and would reserve its decision on the late filing of the proposed appeal ACR 42/20 until after the hearing.

### **Relevant law**

[6] Section 151 of the Accident Compensation Act 2001 (the Act) provides:

(1) An appellant brings an appeal by sending a notice of appeal to, or filing a notice of appeal in, a specified registry.

...

(3) The notice must be received by the specified registry—

(a) within 28 days after the date on which the reviewer gives a copy of the review decision to the appellant; or

...

(c) within any longer time allowed by the District Court.

[7] In *Almond v Read*,<sup>1</sup> Arnold J (for the Supreme Court) outlined the following principles to guide the exercise of the discretion to grant or deny an extension of time to lodge an appeal:

[38] The ultimate question when considering the exercise of the discretion to extend time under r 29A is what the interests of justice require. That necessitates an assessment of the particular circumstances of the case. Factors which are likely to require consideration include:

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<sup>1</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, (2017) 23 PRNZ 533.

- (a) *The length of the delay.* Clearly, the time period between the expiry of the appeal date and the filing of the application to extend time is relevant. But in a case where there has been a slip-up and the appeal date has been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it will also be relevant. Obviously, the longer the delay, the more the applicant will be seeking an “indulgence” from the court and the stronger the case for an extension will need to be.
- (b) *The reasons for the delay.* It will be particularly relevant to know whether the delay resulted from a deliberate decision not to proceed followed by a change of mind, from indecision, or from error or inadvertence. If from a change of mind or from indecision, there is less justification for an extension than where the delay results from error or inadvertence, particularly if understandable.
- (c) *The conduct of the parties, particularly of the applicant.* For example, a history of non-cooperation and/or delay by an applicant may be relevant.
- (d) *Any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome.* Again, the greater the prejudice, the stronger the case will have to be to justify the grant of an extension of time. Where there is significant delay coupled with significant prejudice, then it may well be appropriate to refuse leave even though the appeal appears to be strongly arguable.
- (e) *The significance of the issues raised by the proposed appeal, both to the parties and more generally.* If there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

## Discussion

[8] In terms of section 151(3)(a) of the Act, Ms Rogan was required to file a Notice of Appeal against the Reviewer’s decision within 28 days after the date on which the Reviewer provided a copy of the review decision to him. The Reviewer’s decision was dated 20 October 2019 and sent to Ms Rogan the following day, which left a date of 18 November 2019 for the filing of the Notice of Appeal. In the event, the Notice of Appeal was filed on 26 February 2020. This Court is now being asked to exercise its discretion to allow a longer time for filing the Notice of Appeal (in terms of section 151(3)(c)). In deciding whether to exercise its discretion, this Court will follow the guidelines provided by the Supreme Court in *Almond v Read*.<sup>2</sup>

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<sup>2</sup> Above, note 7.

**(a) The length of the delay**

[9] The Supreme Court noted that the longer the delay, the more the applicant will be seeking an indulgence from the Court and the stronger the case for an extension would need to be; and that, in a case where there had been a slip-up and the appeal date had been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it would also be relevant.

[10] This Court notes that the delay in this case is over 14 weeks, which is a significant period of time. There is no evidence that the appeal date was inadvertently missed, or of how quickly Ms Rogan sought to rectify the mistake.

**(b) The reasons for the delay**

[11] The Supreme Court noted that, if the delay arose from a change of mind or from indecision, there was less justification for an extension than where the delay resulted from error or inadvertence, particularly if understandable.

[12] Ms Rogan stated that the reason for the delay was that she was not able at the time to afford the cost of filing the appeal. At the hearing, Mr Macann noted that Ms Macann was unemployed at the time of the review decision and could not afford the cost of engaging an advocate, and was not confident in filling in the Notice of Appeal on her own.

[13] This Court is not satisfied that Mr Rogan's delay in filing the appeal arose out of understandable error or inadvertence. There is no filing fee to lodge an appeal to the District Court against the decision of a Reviewer. The Notice of Appeal is a straightforward document requiring basic information and is regularly used by self-represented appellants in the ACC jurisdiction. The review decision states that an appeal has to be lodged within 28 days, and provides clear information about the lodging of an appeal. There was clearly no issue with the lodging of Ms Rogan's appeal ACR 137/21 in time.

**(c) The conduct of the parties**

[14] The Supreme Court observed that a history of non-cooperation and/or delay by an applicant might be relevant.

[15] This Court notes that Ms Rogan did not apply for review of the Corporation's decision in the related appeal ACR 137/21, within the statutory three-month timeframe, and, instead, lodged her application for review over two years late. The Court is not aware of any other history of non-cooperation and/or delay by Ms Rogan apart from the late filing of the appeal at hand.

**(d) Prejudice or hardship to the respondent or to others with a legitimate interest in the outcome**

[16] The Supreme Court noted that, where there is significant delay coupled with significant prejudice, then it might well be appropriate to refuse leave even though the appeal appeared to be strongly arguable.

[17] This Court notes that the delay in this case is significant. However, the Corporation does not take issue with the late filing, and the Court is not aware of this causing prejudice or hardship to others with a legitimate interest in the outcome.

**(e) The significance of the issues raised by the proposed appeal, both to the parties and more generally**

[18] The Supreme Court observed that, if there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

[19] This Court accepts that the proposed appeal is significant to Ms Rogan. However, the central issue in the proposed appeal is that same as the central issue in the appeal ACR 137/21 which was lodged in time, namely, whether Ms Rogan's current condition (giving rise to her claim for entitlements) is causally linked with her accident injury or is due to an underlying condition such as Crohn's Disease. The Court has heard the merits of both appeals, and found that Mr Rogan's condition is not due to her accident injury and is due to an underlying condition such as Crohn's Disease. Appeal ACR 137/21 has therefore been dismissed and, had leave to appeal been granted in the appeal ACR 42/20, it too would have been dismissed. There is therefore no significance in the issue raised by this appeal.

**The Decision**

[20] In light of the above considerations, this Court finds that the interests of justice do not require the exercise of the Court's discretion to sustain Ms Rogan's application for leave to file her appeal out of time, which is accordingly dismissed.

[21] There are no issues as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', is written over a faint, circular official stamp.

P R Spiller  
District Court Judge

Solicitors: Hamish Evans, Plymouth Chambers, Christchurch, for the respondent