IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 92 **ACR 69/19**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	ROBERT ERWOOD Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Submissions: H Armstrong (*amicus curiae*)
A Miller and R Mould for the Corporation

Hearing: On the papers

Judgment: 8 June 2023

JUDGMENT OF JUDGE P R SPILLER
Leave to appeal to the High Court
S 162 Accident Compensation Act 2001]

Introduction

[1] These are applications for leave to appeal against two judgments of His Honour Judge McGuire:

(a) Judgment delivered on 15 April 2021.[1] At issue was whether the Corporation's decision, dated 7 April 2015, to decline Mr Erwood's cover for a treatment injury relating to exposure to Miracold, a freezer

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[1] *Erwood v Accident Compensation Corporation* [2023] NZACC 60.

spray for thermo testing of tooth vitality, was correct. The Court dismissed the appeal, for the reasons outlined below.

(b) Judgment delivered on 26 May 2021.[2] At issue here was whether the Court had the power to order the rehearing of a matter under the accident compensation legislation.

Background

[2] On 24 March 2014, Mr Erwood presented to Dr Jackson for treatment for an aching tooth. The clinical notes for that appointment record: "Miracold – single minor point spray on 47 (tooth) for pulp test".

[3] On 25 March 2014, Mr Erwood contacted Dr Jackson by telephone to enquire what had been used in the vitality test. Dr Jackson advised Mr Erwood that he had used Miracold.

[4] On 26 March 2014, Mr Erwood visited Dr Jackson's practice in person. Dr Jackson's record of the visit states:

> Mr Erwood arrived after 5 pm with a written request for me to write a signed letter explaining the use of Miracold spray directly on to his tooth and its chemical contents (for his GP or likely complaint). Advised him that I should have applied to Miracold to a cotton bud to transfer it to the tooth, not applied directly onto the tooth which is potentially dangerous despite controlled localisation of applications. I had done so (after trying air spray from a triple syringe) because I felt the tooth probably too well insulated to be sure it was vit (vital) by cotton bud application and Mr Erwood had refused consent for percussing the tooth or diagnostic PA – other aids to determine the status of the nerve of the tooth. Apologised to Mr Erwood and wrote the explanatory note he requested for him.

[5] Dr Jackson's handwritten letter to Mr Erwood stated:

> Miracold is a propane/butane/hexane mix. Ordinarily it should be sprayed onto a cotton palette and touched on the tooth. It is dangerous to spray directly into the mouth due mostly to risk of inhalation. I did, in this case, spray directly onto the tooth to see if the nerve was alive because if was very heavily restored and likely well insulated. Also, you would not consent to diagnostic tests such as a percussion test to see if there is apical infection or diagnostic x-ray. I used minimal controlled and localised brief spray only, precisely through a spray tip

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2 *Erwood v Accident Compensation Corporation* [2023] NZACC 79.

> onto a point of the tooth. I have not harmed you in any way, but probably should not have done so. I have explained that I cannot help you because of the constraints you have placed on diagnosis and treatment.

[6] On 27 March 2017, Dr Jackson received a telephone call from Crown Dental, advising that Mr Erwood was seeking toxicological data on Miracold. That same day, Dr Jackson recorded in Mr Erwood's dental notes:

> Note for information regarding Mr Erwood's recent attendances. Mr Erwood had been asked on a number of occasions to attend another dentist. Once booked, his appointments cannot be cancelled as he has no contact telephone numbers. He was examined because he said he had a severe toothache requiring urgent assistance. He immediate forbad any percussion of 47 or radiograph precluding significant tests of whether he had a potential non vit abscessing tooth. This put pressure on trying for a definitive response to cold. 47 and 46 may have responded to cold, but neither was certain. He spent time, again, discussing his upper right molar tooth. His toothache was not acute. He telephoned the following day, interrupted treatment of another patient, so conversation had to be interrupted. He has been apologised to for any emotional distress, but appears energised to pursue his latest dental focus.

[7] On 29 March 2014, the manufacturer of Miracold sent an email to Crown Dental confirming the recommended application of the product was to spray onto a cotton roll, palette. The manufacturer was unable to make any statements concerning the side effects in relation to Mr Erwood but advised generally that:

> Butane and Pentane are highly flammable but are not hazardous to organisms. Iso-hexane on the other hand has hazardous characteristics, yet it is highly volatile and will be gone after a very short time. Still it is hard to say how it was spread within the mouth due to the fact that it comes from a tube as an aerosol.

[8] On 7 July 2014, Mr Erwood wrote a four-page letter to Dr Jackson seeking $50,000 for the harm caused by the Miracold.

[9] On 25 July 2014, Dr Jackson responded by letter. He denied that he had caused the physical or mental harm alleged by Mr Erwood, but he apologised for the breakdown in cordiality.

[10] On 9 April 2014, Mr Erwood presented to Dr Mcleod, General Practitioner, for a consultation. Dr Mcleod's notes state:

> Was seen at the dentist and administered a chemical to which he reports having a toxic reaction – hydrocarbon mix including hexane. Small amounts sprayed

> into his mouth on one occasion. Has a lot of anxiety around carcinogenic/toxic reaction to this. No sign local irritation or inflammation in the mouth.
>
> Abdo NAD
>
> A: nausea post exposure to chemical.
>
> P: check bloods but reassured such a small exposure is unlikely to cause any significant reaction.

[11] Also on 9 April 2014, Dr Mcleod completed an ACC 45 claim form on behalf of Mr Erwood. The injury was described as follows:

> Nausea – patient reported irritation in mouth after exposure to.
>
> Signs and Symptoms of the Injury
>
> No sign of injury/irritation mouth or abnormality of abdomen when examined.

[12] Under the heading "how does the injury effect the patient's daily activities?", is recorded: "Reports nausea daily since exposure".

[13] On 22 May 2014, the Corporation issued a decision to Mr Erwood declining his claim for cover for want of evidence of an identifiable physical injury.

[14] On 19 June 2014, Mr Erwood requested a reassessment of his treatment injury claim.

[15] On 12 March 2015, the Corporation informed Mr Erwood that his claim would be reopened.

[16] On 24 March 2015, the Corporation wrote to Dr Jackson requesting information about the treatment provided to Mr Erwood.

[17] On 27 March 2015, Dr Jackson replied in a letter as follows:

> Mr Erwood consulted me, complaining that his lower right second molar tooth (the 47) had recently been severely "aching". He was not willing to let me undertake appropriate testing by way of a percussion test or to radiograph the tooth. On vital inspection, both lower right molars were heavily restored with old amalgamate fillings. I was too concerned that they might have pulpal inflammation or infection in the bone under the tooth. To try to differentiate, I advised Mr Erwood that I should test the response of the nerve to cold. I did this by spraying "Miracold Plus" freezer spray very briefly once onto the centre

> of the occlusal surface of tooth 47. I enquired if he could feel it as cold – and, there being no response, checked for a difference on the adjacent tooth, the 46. I am aware of the importance to avoid respiratory issues and took care with the quantity and direction of application. Mr Erwood certainly did not demonstrate any adverse symptoms when he was present at my surgery and after the spray had been administered. There was no clear response on the teeth to the application of this freezer spray.
>
> Mr Erwood did however take exception to my use of the Miracold upon his awareness of its presence (which would be noticed from the localised regional vapour and the manufacturer's added orange flavour of the spray). He said that he considered the refrigerant a poison. At the time I immediately apologised to Mr Erwood for inadvertently causing offence. I also apologised to him for applying the spray directly to his tooth when the protocol is that the product be applied after spraying onto a cotton bud which is then applied directly to the tooth. As my notes indicate, I did this because I considered the tooth (which was significantly restored) was likely to be too well insulated to show a clear effect from a cotton bud or application. As my only diagnostic test I felt an imperative to try for a definitive result. I believe the quantity applied would not have exceeded the amount delivered within the tooth when multiple teeth are tested by the recommended protocol. Refrigerants function by rapid evaporation so the presence of the chemical would be very transitory.
>
> The material safety data sheet for this product does mention a potential for skin irritation. I am not aware of an adverse effect having occurred in dentistry. Certainly Mr Erwood made no mention of nausea or mouth irritation at the time of my examination on 24 March. In his subsequent letter of complaint on 25 March when he visited me to deliver his letter and undertake a lengthy consultation with me on 26 March, again he made no mention of nausea or mouth irritation. Oral tissues regenerate much more rapidly than skin so I would not expect a topical effect two weeks later.

[18] On 7 April 2015, after receiving Dr Jackson's report and concluding a reassessment, the Corporation issued a decision to decline Mr Erwood's claim for treatment injury. The treatment injury report recorded the reason for declining the claim as: "There is no evidence that a physical injury has occurred as a result of the treatment".

[19] On 26 February 2016, the Corporation received an application from Mr Erwood requesting a review of the 7 April 2015 decision.

[20] On 1 March 2016, the Corporation declined to review the decision made on 7 April 2015 due to the application being received outside the three months' time limit for applying for a review.

[21] On 5 September 2016, the Corporation received a letter from Dr Mcleod, GP, which stated:

> … Mr Erwood presented with a history of burning and nausea following exposure to his chemical. His nausea was present at the time I saw him. He had normal abdominal, mouth and throat examination at the time seen.
>
> Robert's symptoms as reported to me of burning, nausea, headaches, diarrhea, abdominal pain and burning would be consistent with a toxic reaction following exposure to hexane. Burns present at the time of injury also may have healed by the time of examination hence this being normal when seen.

[22] On 17 October 2016, the Corporation received a report from Dr Matthew Bahho, Dental Surgeon, who advised:

> To whom it may concern
>
> From my understanding it is extremely unusual for a dentist to spray Miracold Plus directly onto the teeth, inside the patient's mouth.
>
> The normal practice is to spray onto a cotton palette outside of the mouth before applying the palette to a tooth, and I know of no other cases where a dentist has sprayed it onto teeth inside the mouth.
>
> The Hager and Werken Safety Data Sheet for Miracold does not contain any toxological information. The sheet includes in the list of risk phrases "irritating to skin" and "vapours may cause drowsiness and dizziness".
>
> The Ainsworth Dental Company Safety Data Sheet records under "toxicology information" the following:
>
> No data available. No sensitising effect known.

[23] On 6 January 2017, the Corporation accepted Mr Erwood's late review application in respect of the decision made on 7 April 2015, because it had received an explanation from him as to why he could not apply in time.

[24] In a decision of 16 July 2018, the Reviewer stated that the issue was whether Mr Erwood suffered a person injury as defined in section 26 of the Act. The Reviewer noted that she needed to consider whether there was evidence of a precisely identified physical injury, that is, bodily harm or damage, having some appreciable and not wholly transitory impact on Mr Erwood. The Reviewer was not persuaded on the basis of the medical evidence that Mr Erwood had suffered a personal injury. The Reviewer therefore dismissed Mr Erwood's claim for treatment injury.

[25] On 22 February 2019, Mr Erwood lodged a late appeal against this decision. Then followed ongoing delays despite the attempts by the Registry to progress the appeal, as a result of difficulties in communicating with Mr Erwood and obtaining his submissions.

[26] On 14 October 2020, Mr Erwood addressed a letter to the ACC Appeal Registry stating:

> I also advise that the matter can proceed on the papers, and have advised Ms Deans [counsel for the Corporation] of this in the past. She is agreeable of this, when I spoke to her in the past. There is no need to have a hearing.

[27] On 18 December 2020, the Corporation filed a bundle of documents and sent a copy of the bundle to Mr Erwood with the letter advising:

> As you may be aware, the Court has decided to determine your appeal against ACC on the papers. This means that the Court will not convene a hearing but rather it will decide your appeal based on the evidence provided to the Court and written submissions from the parties.

[28] Mr Erwood's appeal was heard on the papers by Judge McGuire. On 15 April 2021, Judge McGuire dismissed Mr Erwood's appeal against the Corporation's decision to decline cover for a treatment injury.[3]

[29] On 20 April 2021, Mr Erwood sent a letter to the ACC Appeal Registry stating:

> I apply for a rehearing. I am a incapacitated person. I delivered a letter from the Court's forensic psychiatrist dated 17/11/2020, that I should not enter into litigation prior to his assessment of me.
>
> Despite this the Court has ignored this, this letter was filed with the Tribunal.
>
> As a incapacitated person, the Tribunal requires I be protected, as a matter of law. I was not served with the other party's submissions, I was not advised of the hearing date even.
>
> The Tribunal could not proceed with any hearing, having been put on notice by the Court's forensic psychiatrist that I be assessed prior to any litigation.

[30] On 23 April 2021, Mr Erwood applied for leave to appeal against Judge McGuire's judgment of 15 April 2021.

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3 See *Erwood* n1.

[31] On 26 May 2021, Judge McGuire declined Mr Erwood's application to have the judgment of 15 April 2021 recalled and a rehearing granted.[4] On 13 June 2021, Mr Erwood applied for leave to appeal against this judgment.

[32] There then ensured an extended delay during which the Registry and the Court attempted to obtain submissions from or on behalf of Mr Erwood in support of his applications for leave to appeal.

[33] Finally, at a telephone conference held on 7 November 2022, it was confirmed that Ms Armstrong would be appointed as *amicus curiae* for Mr Erwood, and the Court directed a timetable for the filing and serving of submissions.

The Court's judgment of 15 April 2021

Relevant law

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

> 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.

[35] In *O'Neill*,[5] Judge Cadenhead stated:

> [24] The Courts have emphasised that for leave to be granted:
>
> (i) The issue must arise squarely from 'the decision' challenged: ... Leave cannot for instance properly be granted in respect of *obiter* comment in a judgment …;
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> (ii) The contended point of law must be *"capable of bona fide and serious argument"* to qualify for the grant of leave …;
>
> (iii) Care must be taken to avoid allowing issues of fact to be dressed up as questions of law; appeals on the former being proscribed …;
>
> (iv) Where an appeal is limited to questions of law, a mixed question of law and fact is a matter of law …;
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> (v) A decision-maker's treatment of facts can amount to an error of law. There will be an error of law where there is no evidence to support the decision, the evidence is inconsistent with, and

4 *Erwood* v n2.
5 *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

> contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision …;
>
> (vi) Whether or not a statutory provision has been properly construed or interpreted and applied to the facts is a question of law … .
>
> [25] Even if the qualifying criteria are made out, the Court has an extensive discretion in the grant or refusal of leave so as to ensure proper use of scarce judicial resources. Leave is not to be granted as a matter of course. One factor in the grant of leave is the wider importance of any contended point of law … .

Judge McGuire's judgment

[36] Judge McGuire stated that the ultimate issue for determination was whether, as a result of what Dr Jackson did on 24 March 2015, Mr Erwood suffered a personal injury, namely, a treatment injury caused by the treatment administered to him by Dr Jackson. His Honour noted that Mr Erwood had to establish this matter on the balance of probabilities in order to obtain cover under the Accident Compensation Act. Section 25(1)(b) of the Act defines an accident as including the inhalation of any gas on a specific occasion.

[37] Judge McGuire noted that, in this case, it was clear that, on 24 March 2014, Dr Jackson breached the accepted protocols in terms of the administration of Miracold by spraying it directly into Mr Erwood's mouth. His reason for doing so, as stated in his note of 26 March 2014 when Mr Erwood revisited his (Dr Jackson's) practice, was because he felt the tooth was too well insulated to be sure it was vital by cotton bud application. Dr Jackson also noted that Mr Erwood forbad any percussion of the tooth in question or radiograph to assess the tooth. Dr Jackson also said:

> I believe the quantity applied would not have exceeded the amount delivered within the mouth when multiple teeth are tested by the recommended protocol. Refrigerants function by rapid evaporation, so the presence of the chemical would be very transitory.

[38] Dr Jackson further noted that Mr Erwood made no mention of nausea or mouth irritation at the time of the examination, nor did he mention it the following day when he delivered Dr Jackson his letter of complaint.

[39] Judge McGuire observed that the medical evidence in support of Mr Erwood's case primarily derives from Dr Mcleod who stated:

> Mr Erwood presented with a history of burning and nausea following exposure to this chemical. His nausea was present at the time I saw him. He had normal abdominal, mouth and throat examination at the time seen.

[40] Judge McGuire noted that, in the ACC 45 claim form of 9 April 2014, Dr Mcleod diagnosed the injury as:

> Nausea, the patient reported irritation in the mouth after exposure.
>
> No signs of injury/irritation mouth or abnormality of abdomen when examined.

[41] Dr Mcleod also noted that the patient "reports nausea daily since".

[42] Judge McGuire stated that Dr Jackson accepted, as does the Court, that, on 24 March 2014, Miracold was administered contrary to the manufacturer's directions in that it was sprayed directly into the mouth of Mr Erwood rather than sprayed onto a cotton palette which would then touch the tooth concerned. Judge McGuire noted that the ultimate question for this Court, however, was whether this use of Miracold, contrary to the maker's instructions by Dr Jackson, caused a treatment injury to Mr Erwood.

[43] Judge McGuire observed that, in this regard, it was significant that Mr Erwood made no complaint at the time, and, when he contacted Dr Jackson the following day to enquire what had been used in the vitality test, he again made no mention of symptoms suggestive of an injury.

[44] Judge McGuire accepted that Mr Erwood reported nausea to Dr Mcleod when he was examined on 9 April 2014. However, His Honour found it significant that Dr Mcleod also recorded "no signs of injury/irritation mouth or abnormality of abdomen when examined".

[45] Judge McGuire stated that, while it was regrettable that Miracold was administered contrary to the manufacturer's directions, Dr Jackson had explained his reasons for doing so. Ultimately, on the foregoing analysis of the evidence before His Honour, he was unable to conclude that Mr Erwood had proven, on the balance of probabilities, that he suffered an injury as a result of the use of Miracold contrary to the manufacturer's directions. Judge McGuire therefore dismissed the appeal.

Amicus curiae's submissions

[46] Ms Armstrong submits as follows. In light of relevant case-law, the Court envisages a broad and judicial concept for personal injury in the context of a treatment injury. The meaning of personal injury must be interpreted in the light of the purposes of the Act which are concerned with establishing entitlements for impairment, rehabilitation, and treatment.

[47] There is a matter of law to be considered in this case. The matter of law is whether the change in Mr Erwood's physiological state, which is nausea, irritation to the mouth, and the symptoms reported to Dr McLeod by Mr Erwood which include burning, headaches, diarrhoea, abdominal pain, qualify as personal injury caused by treatment. It is submitted that these physiological changes are sufficient as a matter of law to qualify as a personal injury.

[48] Mr Erwood was subject to treatment which was contrary to the manufacturer's directions. Mr Erwood had immediate onset of symptoms following the treatment, and he presented to his GP. The symptoms that Mr Erwood had were consistent with risks associated with Miracold exposure. The evidence before the Court could have enabled Judge McGuire to make a robust inference that Mr Erwood had suffered a personal injury, due to changes at a physiological level. Judge McGuire erred when his Honour did not consider that changes at the physiological level could represent a personal injury.

Discussion

[49] Judge McGuire was required to decide whether the Reviewer correctly dismissed Mr Erwood's review. The Reviewer did so because she was not persuaded on the basis of the medical evidence that Mr Erwood had suffered a personal injury. Judge McGuire, in his judgment, stated the issue in the case in similar terms. His Honour referred to relevant legal principles, analysed the relevant facts and came to the conclusion that, on his analysis of the evidence, he was unable to conclude that Mr Erwood had proven, on the balance of probabilities, that he suffered an injury.

[50] It is not evident to this Court that Judge McGuire, in the course of his judgment, made an error of law as such. It is accepted that a decision-maker's treatment of facts can amount to an error of law. There will be an error of law where there is no evidence to support the decision, the evidence is inconsistent with, and contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision. This Court is not satisfied that any of these criteria has been met so as to give rise to an error of law.

The Court's judgment of 26 May 2021

Relevant law

[51] In *Khan*,[6] the High Court considered an application challenging the District Court's decision to decline to grant a rehearing under r 493 of the District Court Rules 1992, the then equivalent to Rule 11.24 (of the 2014 Rules). Justice Cooper stated:

> [32] I think it is clear that most of the rules contained in Part VII of the District Courts Rules would have no application whatsoever to the conduct of an appeal under the ARCI Act. Even the provisions in relation to judgments do not apply, because there is specific provision for judgments on appeals under the ARCI Act in the ARCI Regulations. …
>
> [43] This extensive statutory regime providing for an initial decision, a review, a full rehearing in the District Court followed by appeals to the High Court and the Court of Appeal again tends against the view that it would have been intended that there be a right of a rehearing of the appeal to the District Court. It is to be remembered that in the case of a proceeding commenced by statement of claim, any rehearing granted under Rule 493 of the District Court Rules would be a rehearing of what was a first instance decision. On the other hand, if the rule were applied in relation to the determination of an appeal by the District Court, the rehearing granted would be in relation to the appeal hearing, not the first instance or even in this case, the second instance decision. I think it unlikely that a rehearing was intended at that point, where there is the substantial protection afforded by further rights of appeal.
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> [44] This detailed legislative provision for rights of review on appeal add support to Mr Tuiqereqere's argument that had the legislature intended that there be a right to apply for a rehearing of the appeal in the District Court there would have been express statutory provision for it.
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> [45] I observe here that r 493 is plainly the intended equivalent in the District Courts Rules of r 494 of the High Court Rules. I consider it clear that the latter could not be used to seek a rehearing of an appeal given not only its placement

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6 *Khan v Accident Compensation Corporation* HC Auckland CIV 2007-485-1632, 25 February 2008.

> in the rules, but also its specific references to "a new trial", and to jurors, verdicts and witness misconduct. The drafting is only apt to refer to the trial of civil actions. The wording of r 393 of the District Court Rules is perhaps less clearly limited to the trial of civil actions, but only to the extent that the provision for civil jury trials in the High Court makes that explicable. Otherwise, the wording of the rule does suggest that it is limited to hearings of claims commenced by statement of claim.
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> [46] I reject also Mr O'Callahan's argument based on *R v Smith*. I consider it plain in the context of the discussion in that case that the power held to exist was one which was peculiarly related to Courts of Appeal either at the top of a hierarchy of Courts or, in circumstances where the final Appellate Court can only be approached by leave and leave was unlikely to be given, a Court of Appeal immediately below the highest Court has effectively made the final decision. In such circumstances, it has been reasoned that it would be most unsatisfactory if that Court's final decision could not be re-opened in the face of evidence suggesting that there had been a material miscarriage of justice.
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> [47] That reasoning cannot be applied to a District Court hearing an appeal under the Accident Compensation legislation. First, it is plainly not a final Appellate Court. Secondly, it is highly unlikely that circumstances giving rise to a miscarriage of justice could not be corrected on appeal to the High Court. As was observed by Goddard J in *Works Civil Construction Ltd v ARCIC* [2001] 1 NZLR 721 at [41];
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> > …it is difficult to accept that any profound procedural error, such as failure to observe natural justice or the fettering of a discretion, does not equally amount to an error of law.

Judge McGuire's judgment

[52] Judge McGuire referred to the history of Mr Erwood's proceedings. His Honour then cited the judgment of Justice Cooper in *Khan* (above).

[53] Judge McGuire considered that he was bound by the decision in *Khan*'s case. His Honour commented that the statutory regime of decision, then review, then full rehearing on appeal to the District Court, then rights of appeal to the High Court and Court of Appeal argued most powerfully that he had no power to grant a rehearing in this case. Accordingly, Mr Erwood's application to have the judgment in this matter recalled, and a rehearing granted, was declined.

Amicus curiae's submissions

[54] Ms Armstrong submits as follows. The question of law is whether the District Court had jurisdiction under r 11.24 of the District Court Rules to order a retrial in the ACC jurisdiction. It could be argued that the District Court was in error because

it was not bound by the High Court's decision in *Khan* because it does not apply to the current legislation and District Court Rules. Sections 155(2) and 156 of the 2001 Act are designed to modify District Court Rules 18.19 and 18.20, rather than to limit the application of r 11.24. It is "too liberal an interpretation" to suggest that those statutory provisions are intended to prevent a rehearing "when there has been a miscarriage of justice". With reference to the Court of Appeal's decision in *R v Smith*, a rehearing can happen at any level of the court system in "exceptional circumstances. The Court has discretion whether or not to grant leave to appeal.

Discussion

[55] This Court finds that the *amicus curiae*'s submissions clearly fail in terms of the High Court's judgment in *Khan* (as referred to above in paragraph [51]). This judgment clearly establishes that there is no provision under accident compensation legislation for the Court to direct the holding of a rehearing. Judge McGuire, as a District Court Judge, was bound by the precedent of a higher Court in deciding the present appeal. It cannot seriously be contended that his judgment to this effect was wrong in law.

The Decision

[56] In light of the above considerations, the Court finds that Mr Erwood has not established sufficient grounds, as a matter of law, to sustain his applications for leave to appeal, which are accordingly dismissed. Mr Erwood has not established that Judge McGuire made an error of law capable of *bona fide* and serious argument in either judgment for which leave to appeal is sought.

[57] Even if the qualifying criteria had been made out, this Court would not have exercised its discretion to grant leave, so as to ensure the proper use of scarce judicial resources. In this regard, this Court notes that the relevant Corporation's decision, to decline Mr Erwood's cover for a treatment injury, dates back over eight years, and that the proceedings in this matter have been subjected to significant delays. This Court is not satisfied as to the wider importance of any contended point of law.

[58] Costs are reserved.

Judge P R Spiller,
District Court Judge

Solicitors for the respondent: Claro Law
Solicitors for the *amicus curiae*: Armstrong Thompson