IN THE DISTRICT COURT
AT WELLINGTON

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

	[2023] NZACC 74	**ACR 68/21**
UNDER	THE ACCIDENT COMPENSATION ACT 2001	
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT	
BETWEEN	NICOLA FOSTER Applicant	
AND	ACCIDENT COMPENSATION CORPORATION Respondent	

AND

	[2023] NZACC	**ACR 73/21**
UNDER	THE ACCIDENT COMPENSATION ACT 2001	
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT	
BETWEEN	HELEN BEAUCHAMP Applicant	
AND	ACCIDENT COMPENSATION CORPORATION Respondent	

Heard at: On the papers

Appearances: Ms K Koloni, advocate for the Applicants
Mr P McBride for the Respondent

Judgment: 12 May 2023

JUDGMENT OF JUDGE C J MCGUIRE
[Applications to recall judgments; s 235 District Court Act 2016]

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[1] Ms Koloni applies to recall the judgments of Judge Spiller, in respect of the applicant Nicola Foster, delivered on 11 May 2022, and in respect of the applicant Helen Beauchamp delivered on 22 July 2022.

[2] Ms Koloni advances the same argument in respect of each applicant. For convenience therefore, they are being dealt with together.

[3] Ms Koloni refers to paragraph 8.2 of the Guidelines to Practice and Procedure for Accident Compensation Appeals dated 1 April 2017 (the Guidelines), which sets out the limited circumstances in which a party can apply to have a judgment recalled:

(a) Where, since the judgment, there has been an amendment to a relevant statute, regulation, or new judicial decision of higher authority;

(b) Where counsel have neglected to direct the Court's attention to a statute, regulation or judicial decision of plain relevance; and

(c) Where there is some other special reason justice requires the judgment be recalled.

[4] In this case, Ms Koloni relies on (c).

[5] The Guidelines refer to *Horowhenua County v Nash (No 2)*[1] where Chief Justice Wild simply said that the third ground for recalling a judgment was "where for some other very special reason justice requires that the judgment be recalled".

[6] Ms Koloni's grounds appear to be:

(a) That Judge Spiller did not comply with s 235 of the District Court Act 2016 (the Act), which provides that the proceedings must be conducted and determined by the Court in accordance with the Act. However, neither of the applications say how Judge Spiller failed to comply with s 235 of the Act.

(b) That Judge Spiller's judgment in each case is contrary to s 110(1) of the Act, in that Judge Spiller has disregarded the written and oral facts in evidence and questions of law and equity presented to the Court in respect of each appellant. Again, she does not specify what Judge Spiller has done to breach s 110(1).

(c) That the judgment in each case is therefore inaccurate, incomplete and therefore misleading – making it plainly wrong.

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1 *Horowhenua County v Nash* (No 2) [1968] NZLR 632.

[7] She also refers to the Court of Appeal decision in *Singh v Chief Executive, Department of Labour*[2] where the Court of Appeal discusses the need for a Court to give reasons.

[8] Ms Koloni concludes in each case by saying that "The Judge does not appear to have given adequate consideration to the facts and evidence, questions of law and equity, and is plainly wrong". She therefore seeks that the judgments be recalled.

[9] Ms McBride, on behalf of the respondent in each case, submits that the application to recall is misconceived and comprises an abuse of process.

[10] He submits that the practice guideline is not and does not purport to be a source of jurisdiction. He also refers to *Horowhenua County v Nash (No 2)*[3] where Chief Justice Wild noted:

> Generally speaking, a judgment, once delivered, must stand for better or worse, subject, of course, to appeal. Were it otherwise, there would be great inconvenience and uncertainty.

[11] Mr McBride notes that the approach was affirmed *R v Smith*[4] where Chief Justice Elias stated:

> Recourse to the power to reopen must not undermine the general principle of finality. It is available only where a substantial miscarriage of justice would result if fundamental error in procedure is not corrected and where there is no alternative effective remedy reasonably available. Without such response, public confidence in the administration of justice would be undermined.

[12] Mr McBride also refers to *Unison Networks Limited v Commerce Commission*[5] where the Court said:

> We conclude by observing that the Court's reasons and the issues it chooses to address are within the discretion of the Court. It will often be unnecessary to deal with all of the submissions presented because of the way in which the case is finally resolved. The Court plainly is able to address submissions in the manner it chooses. While a decision may be recalled where a material issue properly put before the Court is not addressed, excluding a slip or minor error, the cases in which justice will require a recall on this basis are likely to be rare.

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2 *Singh v Chief Executive, Department of Labour* [1999] NZAR 258
3 *Ibid* n1.
4 *R v Smith* [2002] NZCA 335 at [36].
5 *Unison Networks Limited v Commerce Commission* [2007] NZCA 49 at [34].

[13] Apart from the general assertion in each case, that the Judge does not appear to have given adequate consideration to the facts and evidence, questions of law and equity, and that the decision is plainly wrong, Ms Koloni provides no specific reason or reasons in either case why the judgments should be recalled.

[14] Assertions without reasons will never be sufficient grounds for the recall of a judgment. Her applications to recall must therefore be dismissed.

[15] Mr McBride seeks costs.

[16] Mr McBride notes that the case of *Mark Winter Waikato Limited v Tracy International Limited*[6] provides that the Court has jurisdiction to make an award of costs against an advocate. Mr McBride seeks such an order in this case.

[17] Ms Koloni is on notice that general and unsupported assertions of the kind she raises in these cases are not "special reasons" for the purpose of *Horowhenua County* and that further applications similarly unsupported may result in an award of costs against her.

[18] Giving her the benefit of any possible doubt that she may have as to what are and are not grounds to recall judgment, no award of costs will be made against her on this occasion.

[19] The applications are dismissed.

CJ McGuire
District Court Judge

Solicitors: McBride Davenport James, Wellington

6 *Mark Winter Waikato Limited v Tracy International Limited* (1999) 13 PRNZ 259.