PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001 THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY THE APPELLANT

IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 109 ACR 166/22

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

Hearing: On the papers

Appearances: J Carrigan for the Appellant
F Becroft for the Respondent

Judgment: 10 July 2023

JUDGMENT OF JUDGE D L HENARE
[Leave to appeal to the High Court
Section 162(1) Accident Compensation Act 2001]

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[1] The applicant, by his guardian father, applies for leave to appeal to the High Court pursuant to s162 of the Accident Compensation Act 2001(the Act) against a decision of Judge PR Spiller dated 1 March 2023. [1]

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[1] *LR v Accident Compensation Corporation* [2023] NZACC 29.

[2] At issue in the appeal is a claim for funding for treatment overseas, namely selective dorsal rhizotomy (SDR), a surgical procedure available at a Children's Hospital in America. This surgery is not available in New Zealand.

Background

[3] The applicant was born on 12 September 2017 in tragic circumstances. He was one of identical twins; his brother died in utero. Both babies were delivered by emergency caesarean at 32+ weeks. The applicant suffered a birth injury and has a significant disability, suffering from, inter alia, cerebral palsy with significant developmental delays and associated disabilities including spasticity. He has been assessed as having a 98% whole person impairment.

[4] A claim for a treatment injury (relating to a delay in the delivery) was lodged in 2017. It was declined on 6 July 2018 on the basis the Corporation was unable to establish an injury relating to treatment.

[5] In May 2021, Ms Carrigan, lay advocate wrote to the Corporation highlighting several issues with the previous investigation. This prompted further investigation. Additional evidence from Dr Marlow, Maternal Foetal Medicine Subspecialist was obtained. Ultimately a decision was made on 20 October 2021 approving cover for a brain injury, an acute kidney injury (resolved) and a skin injury (resolved).

[6] On 19 January 2022, Ms Carrigan made a formal request to the Corporation for funding for the surgical treatment (SDR) to be undertaken in America. The surgery is not available in New Zealand.

[7] On 20 January 2022, the request was declined by the Corporation on the basis the Corporation was not permitted to fund costs of treatment outside New Zealand.

[8] A review application was filed.

[9] On 26 August 2022, the review application was dismissed, which was upheld on appeal by Judge Spiller.

Grounds of appeal

[10] Ms Carrigan submits Judge Spiller erred when he held that s 128 of the Accident Compensation Act 2001 (the Act) prevents the Corporation from funding the treatment sought overseas. The grounds of appeal are as follows:

(a) Did the Judge err by failing to commence the interpretative exercise presuming a rights consistent purpose of the Accident Compensation Act, relevantly s128 and clause (2) (b)-(d) of Schedule 1?

(b) Did the Judge err in failing to commence the interpretive exercise pursuant to s 6 of the NZ Bill of Rights Act 1993 (NZBORA)?

(c) Did the Judge err when he found he was constrained by s 4 of NZBORA and s21B(1) of the Human Rights Act in setting aside or otherwise varying the original review decision dated 22 August 2022?

(d) Did the Judge err when he failed to consider section 5 in addition to s4 of NZBORA and in so doing so failed to consider if the limits imposed by s 4 could be justified?

(e) Did the Judge err when he failed to consider that no issues arose from s 5 because s 8 of NZBORA, the right not to be deprived of life including quality of life, is illimitable and cannot have limits placed on it/

(f) Did the Judge err when he failed to also consider as part of the interpretative process NZ's international obligations and responsibilities pursuant to the United Nations Conventions on the Rights of the Child and the Rights of Persons with Disabilities, including clause 26?

The District Court Judgment

[11] Judge Spiller acknowledged the applicant's profound injuries, disabilities and developmental delays, and the rehabilitation sought in America may be of benefit to him.

[12] In setting out the background to the appeal, Judge Spiller noted the claim for treatment and rehabilitation set out by Ms Carrigan in a letter to the Corporation, following lodgement of the Notice of Appeal:

> [17] On 14 September 2022, Ms Carrigan confirmed that she was still seeking $500,000 to pay for [the applicant's] surgery and rehabilitation overseas in America. On 15 September 2022, the Corporation reiterated that it was unable to meet this cost.

[13] Ms Carrigan subsequently submitted on appeal that payment should be made for habilitation costs. His Honour found no provision in the Act for payment of habilitation costs which is a distinct concept from rehabilitation, both therapeutically and legally. That what was essentially sought is funding for SDR surgical treatment. In terms of s 6 of the Act, treatment includes rehabilitation.

[14] After carefully noting Ms Carrigan's submissions regarding the relevant provisions in the Act, including the purpose provision, His Honour considered the statutory bar to overseas treatment is plainly expressed in s 128, supported by the relevant clauses in Schedule 1.

[15] His Honour discussed s 3 the purpose provision and s6 the interpretation section noting *inter alia* that rehabilitation includes treatment, and the later definition of treatment in s6 also includes rehabilitation, both physical and cognitive.

[16] Noting Ms Carrigan's submissions, His Honour then considered the meaning and application of s128 together with s4 of NZBORA and provided reasoning in support of his conclusions that:

> [27] First, the plain words of section 128 of the Accident Compensation Act dictate that the Corporation must not pay for costs incurred outside New Zealand for any rehabilitation (other than payment of attendant care, which is not applicable to [the applicant]). The clear meaning of this section is supported by clause 2(2)(b)-(d) of Schedule One of the Act which requires the Corporation to take into account the options and cost of treatment of injury in New Zealand.
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> [28] Second, the plain words of section 128 of the Act are in line with its purpose which, as reflected in section 3, is to provide for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs).

> [29] Third, there is no provision in the Act for payment of habilitation costs. What is being sought for [the applicant] is treatment, which, in terms of section 6, includes physical and cognitive rehabilitation. As noted above, the Corporation is prevented by the Act from paying for his rehabilitation costs incurred outside New Zealand.
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> [30] Fourth, whatever failings of the medical profession and the Corporation there might have been cannot override the express words of the Act governing the payment of overseas rehabilitation costs. It is accepted that [the applicant] appears to be a good candidate for selective dorsal rhizotomy, which is not provided in New Zealand. However, it is established in case-law that the Court has no discretion to allow payment for rehabilitation costs incurred outside New Zealand, even where the person cannot be treated in New Zealand for his or her injuries.
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> [31] Fifth, section 4 of the NZBORA provides that no court shall hold any provision of an enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective, or decline to apply any provision of the enactment, by reason only that the provision is inconsistent with any provision of this Bill of Rights. In that section 128 of the Accident Compensation Act unambiguously prevents the Corporation from paying for rehabilitation costs incurred outside New Zealand, this Court has no power to decline to apply this provision, however inconsistent it is with any provision of the NZBORA. Likewise, this Court has no power to decline to apply the clear wording of section 128 by reason of the Human Rights Act 1993 or the United Nations Conventions ratified by New Zealand."

Principles relating to application for leave to appeal

[17] Section 162 of the Act provides for appeals to the High Court on a question of law with the leave of the District Court. The applicant must show that the decision is wrong in law.

[18] In *O'Neill*,[2] the Court summarised the principles relevant to the granting of leave:

> [24] The Courts have emphasised that for leave to be granted:
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> (i) The issue must arise squarely from "the decision challenged" e.g. *Jackson v ACC* unreported, HC Auckland, Priestley J, 14 February 2002, AP 404-9601; *Kenyon v ACC* [2002] NZAR 385. Leave cannot for instance properly be granted in respect of obiter comment in a judgment: *Albert v ARCIC* unreported, France J, HC Wellington, AP 287/01, 15 October 2002;
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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: e.g. *Impact Manufacturing* unreported, Doogue J, HC Wellington, AP 266/00, 6 July 2001;

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2 *O'Neill v Accident Compensation Corporation* [2008] NZACC 250 at [24] and [25].

(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: e.g. Northland *Cooperative Dairy Co. Ltd v Rapana* [1999] 1ERNZ 361, 363 (CA);

(iv) Where an appeal is limited to questions of law, a mixed question of law in fact is a matter of law: *CIR v Walker* [1963] NZLR 339, 354;

(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 contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision: *Edwards v Bairstow* [1995] **sic** [1955] 3 All ER 48, 57;

(vi) Whether or not a statutory provision has been properly construed or interpreted and applied to the facts is a question of law: *Commissioner of Inland Revenue v Walker* [1963] NZLR 339, 353-354 (CA); *Edwards v Bairstow* [1995] **sic** [1955] 3 All ER 48,57.

[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: eg *Jackson* and *Kenyon* above.

Submissions of the parties

[19] Ms Carrigan submits:

(g) The Court should apply the law, so that section 128 is given a rights-based interpretation, as held by the Supreme Court in *Fitzgerald*.[3] When such approach is applied, the Corporation may be permitted to fund the surgery overseas.

(h) The District Court has the capacity to make a declaration that s128 cannot be used to limit the applicant's right to quality of life.

(i) The issues in this appeal are relevant and should be determined by the higher courts.

(j) The principles in *O'Neill* are satisfied because.

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3 Fitzgerald v R [2021] NZSC 131 at [56].

i. the application for leave arises squarely from the decision.

ii. e contended point of law is capable of qualifying for grant of leave.

ii. the facts are not relied on to be dressed up as questions of fact.

iii. the issue of habilitation versus rehabilitation may be a a mixed question of fact and law capable of being regarded as a question of law. The Judge was constrained by s21B (1) of the Human Rights Act and the issue of *habilitation* versus *rehabilitation* was not considered. The applicant was injured in utero and the medical team failed to properly advise the parents as to the risk of giving birth. The applicant cannot be rehabilitated to his former self.

iv. There is no quibble that the Judge improperly construed or wrongly interpreted s128 on its plain meaning. The Judge could not give the Act a rights-based interpretation, which may have changed the outcome of the case.

(e) The focus on s128 fails to consider the intent of the Act; fails to consider the informal supports who work to ensure the applicant's quality of life, and it fails the community by way of MOH Disability Support Services (negligible though that support was, prior to cover granted for the injuries) who had to step in and pick up the costs.

(f) This is a meritorious case on the law and facts that should be referred to the High Court.

[20] Ms Becroft submits:

(a) The wording and intention of s128 is plain and cannot be read any other way. The basis of the Corporation's decision was not that the surgery was not an appropriate one, or even that the applicant would not benefit from it, but rather the Corporation was not permitted to pay the cost of treatment undertaken in another country.

(b) The limitation on s128 as to funding arises from a core purpose of sustainability under the Act.

(c) In *Fitzgerald*, the Supreme Court confirmed the law should be read in line with NZBORA where possible. However, *Fitzgerald* is not authority for rewriting a provision that is clear both in its terms and intention

(d) The judiciary is not permitted to read a rights-based interpretation into s128 of the Act that would undermine, and in fact re-write the provision.

Should leave be granted

Relevant provisions of the Act

[21] To determine whether leave should be granted, it is first necessary to outline the relevant provisions of the Act governing the provision of the entitlement to rehabilitation /treatment outside New Zealand.

[22] Section 128 of the Act provides:

> The Corporation must not pay for costs incurred outside New Zealand for any rehabilitation, unless section 129 applies or regulations made under this Act require such a payment.

[23] The parties agree that s129 does not apply here and there are no relevant regulations under the Act which authorise the Corporation to make any payments for rehabilitation outside New Zealand. This Court observes while s129 provides for occasions where the Corporation will pay for social rehabilitation for attendant care, s129 has limitations. It is not expansive.

[24] Rehabilitation, as noted by Judge Spiller is covered by Part 1 of Schedule I and includes treatment, social rehabilitation and vocational rehabilitation. Ms Becroft submitted the Corporation has provided entitlements to the applicant following the grant of cover, including social rehabilitation and other treatment. Ms Becroft submitted the entitlements have been provided in New Zealand and added to quality of life, a value addressed by Ms Carrigan in her submissions.

[25] In reference to s6 and the grant of cover, treatment is an entitlement under clauses 1-6 of Schedule 1. Clause 1 states the Corporation will pay or contribute to the cost of treatment subject to the requirements of clause 2. These clauses relevantly provide:

> **1 Corporation's liability to pay or contribute to cost of treatment**
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> (1) The Corporation is liable to pay or contribute to the cost of the claimant's treatment for personal injury for which the claimant has cover if clause 2 applies,—
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> (a) to the extent required or permitted under an agreement or contract with any person for the provision of treatment; or
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> (b) if no such agreement or contract applies, to the extent required or permitted by regulations made under this Act; or
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> (c) if paragraphs (a) and (b) do not apply, the cost of the treatment.
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> (2) In subclause (1)(c), cost means the cost—
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> (a) that is appropriate in the circumstances; and
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> (b) as agreed by the Corporation and the treatment provider.
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> **2 When Corporation is liable to pay cost of treatment**
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> (1) The Corporation is liable to pay the cost of the claimant's treatment if the treatment is for the purpose of restoring the claimant's health to the maximum extent practicable, and the treatment—
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> (a) is necessary and appropriate, and of the quality required, for that purpose; and
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> (b) has been, or will be, performed only on the number of occasions necessary for that purpose; and
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> (c) has been, or will be, given at a time or place appropriate for that purpose; and
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> (d) is of a type normally provided by a treatment provider; and
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> (e) is provided by a treatment provider of a type who is qualified to provide that treatment and who normally provides that treatment; and
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> (f) has been provided after the Corporation has agreed to the treatment, unless clause 4(2) applies.
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> (2) In deciding whether subclause (1)(a) to (e) applies to the claimant's treatment, the Corporation must take into account—
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> (a) the nature and severity of the injury; and
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> (b) the generally accepted means of treatment for such an injury in New Zealand; and

> (c) the other options available in New Zealand for the treatment of such an injury; and
>
> (d) the cost in New Zealand of the generally accepted means of treatment and of the other options, compared with the benefit that the claimant is likely to receive from the treatment.

[26] Taken together, the statutory framework contains limitations, even where there is entitlement to treatment and rehabilitation in New Zealand.

[27] Section 128 expressly prohibits the Corporation paying costs for rehabilitation or treatment obtained outside New Zealand. SDR is not available in New Zealand.

[28] Ms Becroft's submission that the Act draws lines in terms of the provision of cover and entitlements is supported by the dicta of Chief Justice Elias in *Allenby,*[4] that:

> [7] The Injury Prevention, Rehabilitation, and Compensation Act 2001 provides cover on the **basis of line-drawing which reflects policy choices**. Such line-drawing has resulted in legislation which is technical. Approaches taken to the interpretation of provisions under earlier accident compensation legislation need to be treated with some caution in considering the current legislation…
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> [Emphasis added]

[29] Elias CJ considered the legislative history and noted since 1992 that a number of earlier provisions relating to personal injury by accident, were no longer expansive. This had had the effect the legislation was not easy to follow, and there was much cross referencing and repetition. In this case, cross referencing can be seen in the interrelated definitions of rehabilitation and treatment.

[30] There is no doubt of the changes made to the accident compensation legislation since it was first enacted. The legislative framework and statutory changes result from the Parliament's power to enact those changes. For example, in 2005, the Parliament substituted the words "*must not pay"* for "*liable to"* in s128. There can be no reading down of the plain meaning of s128 which aligns with a core purpose of the scheme discussed by Judge Spiller, that of sustainability.

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4 *Allenby v Accident Compensation Corporation* [2012] NZSC 33.

[31] I accept Ms Carrigan's submission that sustainability is not the sole focus. To achieve fairness and an enduring scheme, sustainability is balanced with minimising the overall incidence of injury and the impact of injury on the community including economic, social, and personal costs.

A rights-based interpretation

[32] Central to Ms Carrigan's submissions is that s128 of the Act should be given a rights-based interpretation, and when that exercise is undertaken pursuant to NZBORA, that may change the outcome of the case.

[33] Ms Carrigan submits the principles set out by the Supreme Court in *Fitzgerald* provide a sound legal basis for appeal.

[34] Ms Becroft accepts the Supreme Court confirms the law should be read in line with NZBORA where a rights-consistent meaning is possible. *Fitzgerald* is not authority for any court to rewrite a provision that is clear in terms and intention.

[35] Ms Becroft submits *Fitzgerald* concerns the application of the three strikes regime and the extent to which NZBORA and New Zealand's international obligations impacted the Sentencing Act.

[36] In Ms Becroft's submission, the decision provides a tidy summary:

> [11] The Sentencing Act 2002 was amended in 2010 to incorporate a "three strikes" regime, providing mandatory sentencing for certain categories of repeat offenders. The Appellant, Mr Fitzgerald, was sentenced under s86D(2) of the Sentencing Act for a "third strike" offence under that regime. It is common ground between the parties that the sentence imposed was a breach of s9 of the New Zealand Bill of Rights Act 1990 ("the Bill of Rights"), which affirms that everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment. It is common ground that the Appellant's sentence was disproportionately severe compared to the seriousness of the offending. The issue on this appeal is whether the sentencing Judge was bound by the three strike regime to impose that sentence, or whether the Bill of Rights itself required otherwise.

[37] The argument for Mr Fitzgerald was that the Court retained a discretion under s108 of the Sentencing Act, interpreted in light of NZBORA, to discharge

Mr Fitzgerald without conviction in order to avoid an application of the three strikes rule, and a breach of s 9.

[38] The Supreme Court raised an alternative argument, namely that the relevant three strikes provision within the Sentencing Act could potentially, by virtue of s 6 of NZBORA, be restrictively interpreted, as subject to a limitation that it does not require the imposition of a sentence in breach of s 9 of NZBORA.

[39] The Supreme Court emphasised that the intention behind the legislation was to target the worst repeat, violent, and sexual offenders. However, the final legislation was expressed in terms broad enough to also capture those who committed offences which were relatively minor. Mr Fitzgerald fell into that category.

[40] The Supreme Court confirmed the upshot of s 6 of NZBORA is that the Courts should as far as possible, seek a rights consistent meaning. It also said that a rights consistent meaning must only be possible, it need not be the most likely meaning, or even a likely meaning.[5] The Court explained that s 6 sets out the outer limits of what is possible. The meaning arrived at however cannot amount to a refusal to apply the enactment, nor can it amount to treating the enactment as invalid and ineffective, impliedly repealed or revoked (s 4 of NZBORA).

[41] The Supreme Court noted the distinction between a legitimate interpretation and an illegitimate judicial amendment of a provision. It cautioned that the Courts may interpret, but not legislate. There is reference to *Sheldrake v Director of Public Prosecutions*,[6] where Lord Bingham said that a rights compliant interpretation would not be possible if:

> …such an interpretation would be incompatible with the underlying thrust of the legislation, or would not go with the grain of it,… **or would change the substance of a provision completely**, or would remove its pith and substance, or would violate a cardinal principle of the legislation.
>
> [Emphasis added]

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5 Ibid, at [58].

6 *Sheldrake v Director of Public Prosecutions* [2004] UKHL 43.

[42] The Supreme Court amplified:

> [68] To express this another way, and in terms of the New Zealand legislation, the purpose of the enactment, as gleaned from the words of the enactment itself and the statutory context, may mean that the rights compliant interpretation is not possible without disapplying the legislation in question in some way, which s4 precludes.

[43] Further, at paragraph [73]:

> …where the language of a provision is clear enough to exclude the possibility of a rights consistent meaning, s4 requires the Court to give effect to the rights inconsistent meaning.

[44] The Supreme Court ultimately concluded the text of s 106 allowed for a narrow and rights consistent reading of the exclusion to discharge without conviction. The Court however concluded that discharge was not appropriate in the particular circumstances of Mr Fitzgerald's case and went on to consider whether s 86D itself, could be given a rights consistent interpretation. The Supreme Court found that it was difficult to conclude that Parliament wished (in enacting the three strikes rule) to direct another branch of government (the judiciary) to breach a right as fundamental as that affirmed in s 9.

[45] The Supreme Court held the provision did not preclude a proviso being read into s 86D(2) in accordance with s 6 of NZBORA, so long as that proviso could be shown to align with the underlying purpose of the provision and the wider three strikes regime.[7] It went on to note the purpose of the provision was to incapacitate repeat offenders and to deter those who committed serious violent offences. The regime was not intended to apply to those who did not repeatedly commit serious violent offences. Reading in an exception did not, in the Supreme Court's view, nullify or disapply the underlying scheme, text or purpose of s 86D(2) or the surrounding three strikes regime. For those reasons, the Supreme Court was satisfied that s 86D(2) should be given a rights consistent meaning and be read as subject to the proviso that a maximum sentence must not be imposed where to do so would entail a breach of s 9 of NZBORA Rights.

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7 Ibid, at [112].

[46] Judge Spiller considered Fitzgerald and found that s 128 could not be given the rights-based interpretation because of the clear and unambiguous wording of the provision taken together with the statutory context and consistency between the s128 prohibition and the broader purposes of the scheme. Further, s 128 was not a provision which contained a discretionary power.

[47] This Court agrees with the conclusions of Judge Spiller. Fitzgerald is not an argument for a provision which expressly excludes something, to be read so as to permit the very thing it precludes. Judge Spiller is correct, there is no room for the court to undertake an interpretative exercise under NZBORA when the wording and intention of s 128 is so clear and unambiguous, it cannot be read any other way.

[48] Ms Carrigan acknowledges the courts use of scarce judicial resources and submits the family of the applicant has scarce resources too. For both reasons then, care needs to be taken with consideration of questions that have no realistic prospect of success. Importantly so, when considering a question of law, as here, in relation to the application of s128, that has such clear meaning.

[49] In summary then, this case can be distinguished from Fitzgerald for four reasons. First, in Fitzgerald the breach of the fundamental right was clearly made out. Secondly, the provision in play directly breached the right identified. Thirdly, the Supreme Court considered the outcome in the case was at odds with the intention behind the three strikes rule. Fourthly, the wording of s86 of the Sentencing Act permitted the Court to read down and draw in a rights consistent meaning, without disturbing the intention and thrust of the provision.

[50] In the present case, the relationship between the provision and the argued breach is more distant, and to read in the rights-based approach would not only strain meaning and intention, but also directly undermine, and rewrite s 128.

[51] This Court accepts Ms Becroft's submission while Ms Carrigan has raised a question of law, it is not one that is seriously arguable, given s 128 is the plainest example of a line drawn around entitlements preventing funding of treatment or

rehabilitation overseas, except in limited circumstances which do not apply here. In consequence, no question of law arises from Judge Spiller's decision.

[52] For the sake of completeness, Ms Carrigan referred to the failings of the medical profession to the applicant and his family and the failings of the Corporation in the past investigation of the claim for cover. Judge Spiller found whatever those failings may be, they cannot override the express words of s128 governing the payment of overseas rehabilitation costs. This Court agrees.

[53] For these reasons, this Court declines the application for leave to appeal to the High Court.

Result

[54] The Court answers the questions raised on behalf of the applicant as follows:

(a) Did the Judge err by failing to commence the interpretative exercise presuming a rights consistent purpose of the Accident Compensation Act, relevantly s128 and clause (2) (b)-(d) of Schedule 1?

The Court answers No.

(b) Did the Judge err in failing to commence the interpretive exercise pursuant to s6 of the NZ Bill of Rights Act 1993 (NZBORA)?

The Court answers No.

(c) Did the Judge err when he found he was constrained by s4 of NZBORA and s21B(1) of the Human Rights Act in setting aside or otherwise varying the original review decision dated 22 August 2022?

The Court answers No.

(d) Did the Judge err when he failed to consider section 5 in addition to s4 of NZBORA and in so doing so failed to consider if the limits imposed by s4 could be justified?

The Court answers No.

(e) Did the Judge err when he failed to consider that no issues arose from s5 because s8 of NZBORA, the right not to be deprived of life including quality of life, is illimitable and cannot have limits placed on it/

The Court answers No.

(f) Did the Judge err when he failed to also consider as part of the interpretative process NZ's international obligations and responsibilities pursuant to the United Nations Conventions on the Rights of the Child and the Rights of Persons with Disabilities, including clause 26?

The Court answers No.

[55] I am satisfied Judge Spiller's decision is not wrong in law.

[56] Accordingly, I dismiss the application for leave to appeal the judgment of Judge Spiller to the High Court.

[57] Costs are reserved. If any issues as to costs arise, memoranda may be filed within 21 days.

D L Henare
District Court Judge