

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 34

ACR 214/21

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF
THE ACT

BETWEEN HELEN WATSON
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: On the Papers

Submissions: K Koloni for the Appellant
B Marten for the Respondent

Judgment: 21 February 2024

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[On application for recall of judgment]**

Introduction

[1] On 8 January 2024, judgment was entered dismissing an appeal brought by Ms Watson.¹ At issue in the appeal was a decision of a Reviewer dismissing an application for review, declining Ms Watson deemed cover for a chronic regional pain syndrome (CRPS).

¹ *Watson v Accident Compensation Corporation (Personal Injury)* [2024] NZACC 2.

[2] On 26 January 2024, Ms Koloni, for Ms Watson, filed an application for recall of the appeal judgment. Ms Koloni provided final submissions on 19 February 2024.

[3] For the purposes of this application, it is not necessary to set out the judgment of 8 January 2024 in any detail. The Court reached the view that Ms Watson is not entitled to deemed cover for CRPS. This is because of the absence of a claim for cover for CRPS, such claim being the vital missing link in the chain of events prescribed for cover by the governing Act. The Court noted that it does not have the power to override the express provision of the Act which required Ms Watson to make a claim if she wished cover to be granted for CRPS.

Application for recall

[4] The ACA Practice Guidelines² list three categories of cases in which a judgment may be recalled. These categories were initially set out by Wild CJ in *Horowhenua County v Nash (No. 2)*.³ Ms Koloni, for Ms Watson, relies on the third category:

(c) For some other special reason, justice requires the judgment be recalled.

[5] The Corporation opposes this application.

Legal Principles

[5] In *Horowhenua County*,⁴ Wild CJ noted that:

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.

² *Guidelines to Practice and Procedure for Accident Compensation Appeals in the District Court* (1 April 2023), Paragraph 8.2.1.

³ *Horowhenua County v Nash (No. 2)* [1968] NZLR 632, 633, applied in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

⁴ Above, note 3, at 633.

[6] In *Smith*,⁵ Elias CJ stated:

[36] 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.

[7] In *Unison Networks Ltd*,⁶ France J, for the Court of Appeal stated:

[34] 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 a 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.

[8] In *Ideal Investments*,⁷ Katz J, for the Court of Appeal, stated:

[4] ... A decision to recall a judgment will only be made in exceptional circumstances. The limited grounds on which a court may recall a decision (other than under the slip rule) are well-established: ...

[5] A recall application cannot be used to relitigate the reasons provided in a leave decision. Nor can it be a means of collateral attack on a decision. A judgment should not be recalled in order to consider a challenge to substantive findings of fact or law, nor to allow a party to recast arguments previously made or advance arguments that could have been raised earlier but were not. Recall applications that do not engage with the established grounds for recall but rather attempt to re-open the merits of the judgment sought to be recalled are an abuse of process and will be dismissed on that basis.

Submissions for Ms Watson

[9] Ms Koloni, for Ms Watson, submits that justice requires the Court's judgment to be recalled, on the basis of the following:

- (a) Article 14 of the International Covenant on Civil and Political Rights (ICCPR), requiring a fair hearing by an impartial tribunal;

⁵ *R v Smith* [2003] 3 NZLR 617.

⁶ *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49.

⁷ *Ideal Investments Ltd v Earthquake Commission* [2023] NZCA 388.

- (b) Section 27 of the Bill of Rights Act 1990, requiring the observance of the principles of natural justice;
- (c) Section 110 of the District Court Act 2016, on the basis that the facts in evidence were not “recorded accurately, are incomplete, and therefore misleading”;
- (d) An alleged failure by the Judge to deal with:
 - (i) Communications between medical professionals and the Corporation regarding Ms Watson’s chronic regional pain syndrome (CRPS) and her claim;
 - (ii) The implications of the Corporation approving treatment in Ms Watson’s case;
 - (iii) The statutory timeframes within the Accident Compensation Act 2001;
 - (iv) Ms Watson’s brain injuries, her vulnerable position, and notions of fiduciary duty;
 - (v) The Privacy Act 2020;
 - (vi) Existing case law, namely *Medwed v ACC* [2009] NZACC 86;
 - (vii) Arguments presented by Ms Koloni.
 - (viii) Alleged failures by the Corporation to observe the principle of procedural fairness, and to follow relevant legislation; and
 - (ix) The Court’s “investigative” function, as opposed to its adversarial function.

- (e) Alleged failures by the Corporation to observe the principle of procedural fairness, and to follow relevant legislation in its dealing with Ms Watson.

Discussion

[10] This Court acknowledges the submissions provided by Ms Koloni, for Ms Watson, that justice requires that the Court's judgment be recalled. However, for the following reasons, the Court does not accept Ms Koloni's submissions.

[11] First, Ms Watson's appeal was conducted in a lengthy hearing in which Ms Koloni was allowed a considerable time to present the appeal for Ms Watson, and Ms Watson herself was allowed to make statements of her own.

[12] Second, the relevant facts of the case were summarised in paragraphs [2] to [29], and the relevant legal principles were summarised in paragraphs [30] to [41], of the Court's judgment. It was unnecessary to deal with all of the information presented, because of the way in which the appeal was finally resolved.

[13] Third, the Court acknowledged and summarised the submissions made by Ms Koloni, for Ms Watson, at paragraph [43] of the judgment, and then provided reasons at paragraphs [45] to [49] why the Court decided that the appeal was dismissed. It was unnecessary to deal with all of the submissions presented, because of the way in which the appeal was finally resolved. It has been held by the Court of Appeal that recall applications cannot be used to relitigate the reasons provided in a leave decision, as a means of collateral attack on a decision, or as a challenge to substantive findings of fact or law.

[14] Fourth, the Court has no personal connection with Ms Watson, Ms Koloni, the Corporation or Mr Marten (who appeared for the Corporation), and had no reason to be otherwise than impartial and unbiased.

[15] Fifth, this Court finds that the essence of the present application for recall of the judgment is essentially an attempt to relitigate the merits of Ms Watson's appeal.

It has been held by the Court of Appeal that recall applications that attempt to re-open the merits of the judgment in question are an abuse of process and will be dismissed on that basis.

Conclusion

[16] In light of the above considerations, the Court finds that Ms Watson has not established that, for some special reason, justice requires that the Court's judgment be recalled.

[17] The application for recall is therefore dismissed.

A handwritten signature in black ink, appearing to read 'P R Spiller', with a stylized, cursive script.

P R Spiller
District Court Judge