IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 134 ACR 313/18

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

Submissions: The Appellant is self-represented
H Evans for the Corporation

Hearing: On the papers

Judgment: 10 August 2023

JUDGMENT OF JUDGE P R SPILLER
[Leave to appeal to the High Court
Section 162(1) Accident Compensation Act 2001]

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 20 February 2023.[1] At issue in the appeal was whether the Corporation, in its decision of 23 March 2018, correctly declined Mr Williamson's entitlement to weekly compensation on the basis that he had unreasonably failed or refused to undergo an initial medical assessment. The Court only partially allowed the appeal, for the reasons outlined below.

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1 *Williamson v Accident Compensation Corporation* [2023] NZACC 002.

Background

[2] On 2 March 2017, the appellant suffered a concussion as a result of being struck in the left temple region whilst raking hay on his brother's farm. Although he did not lose consciousness, the injury was significant. Following a visit to his GP several days later, he was referred to a concussion service.

[3] On 5 May 2017, the Corporation confirmed that it had added mild traumatic brain injury as additional cover for Mr Williamson. This was based on receipt of a report dated 1 May 2017 from Dr John McVicar, a specialist in musculoskeletal pain medicine.

[4] On 24 August 2017, Mr Williamson was assessed by Dr Hegarty, Consultant Clinical Psychologist. Under the heading "Neuropsychological Summary", he recorded:

> Mr Williamson suffered what appeared to be a concussion during an accident on 2 March 2017. He reported no, or possibly, a very brief period of altered consciousness, and no identifiable post traumatic amnesia. Based on his reports, it appears at most he would have suffered concussion or a mild traumatic brain injury. I understand that this has been the medical opinion to date.

[5] On 25 August 2017, due to Mr Williamson's slow recovery, he was referred for an MRI. This identified "no significant intracranial abnormality. Facial sinus disease, but this is more on the right side rather than the left".

[6] On 13 September 2017, Dr Robb carried out a medical case review. Under the heading "Current Diagnosis", Dr Robb concluded that Mr Williamson's main problem was:

> Variable persisting headaches affecting the left temporal region, the site of the laceration that occurred on 2 March 2017. An MRI investigation has been normal, and there is no tenderness over the area. Owen has now persisting constant unremitting pain in this region for over six months. It is disproportionate , given the absence of clinical or radiological abnormalities and his pain condition therefore meets the criteria for diagnosis of chronic regional pain condition.
>
> He also has long standing chronic fatigue syndrome (CFS), which appears to have been exacerbated by the incident of 2 March 2017, but which was pre-existing, and he has been diagnosed with irritable bowel syndrome.

[7] Dr Robb concluded that Mr Williamson's chronic regional pain was directly related to the accident of 2 March 2017. Dr Robb noted that Mr Williamson's chronic variable fatigue was pre-existing for around 30 years, and, although it appeared to have been exacerbated by the event of 2 March 2017, it was not caused by it. Dr Robb concluded that Mr Williamson was unable to work in his pre-injury part time job as a firewood contractor and that he would benefit from referral to a pain specialist for better management.

[8] On 15 January 2018, Mr Williamson was assessed by Dr Johnson, Neurosurgeon. In his assessment, Dr Johnson summarised his situation:

> The overall impression therefore is that the headaches are due to the head injury that he has had, and has developed some chronic pain issues
>
> My recommendation is that he stays within the pain service for control of his headaches.

[9] On 29 January 2018, Dr Anderson, Pain Specialist, reported. In his summary he said:

> Owen has a persistent (chronic) pain problem. Specifically, he has regional pain syndrome predominantly involving the frontal and left parietal regions of his head, with the main pain feeling as if it is located in behind his left eye.

[10] Dr Anderson made the following recommendations:

- Medication trials to be managed by Owen's GP – Doctor Vern Smith, eg. slow release Ibuprofen and perhaps low dose of tricyclic analgesic.
- Physiotherapy to "gently mobile his cervical spine" using manual therapy and myofascial release.
- Encouragement to return to an aerobic exercise regime.
- Start his usual work activities, but start slow, and build up, ie. pace himself.

[11] On 22 January 2018, Mr David Attwell, Occupational Assessor, completed an initial occupational assessment report (complex). Mr Attwell noted:

> Owen's interview was held at the CODC rooms in Ranfurly. Owen forgot the appointment, but attended promptly when phoned. The interview was 1.5 hours duration and Owen was helpful and cooperative throughout the assessment.

[12] In the course of the assessment, Mr Williamson acknowledged that he could undertake a number of the work types discussed.

[13] On 1 February 2018, the Corporation wrote to Mr Williamson and advised him that it had arranged for him to have an initial medical assessment with Dr Keith Murray on 2 March 2018.

[14] On 7 February 2018, Mr Williamson replied by letter and advised that he declined to attend the initial medical assessment with Dr Murray. Mr Williamson advised that this was because of recent assessments from Drs Anderson and Johnson, which indicated that he had ongoing failure to control his pain and other symptoms and he thought that an assessment would be "premature and inappropriate".

[15] On 7 February 2018, the Corporation replied by email saying that Mr Williamson was at risk of losing payment of his weekly compensation if he refused to attend the initial medical assessment.

[16] On 9 February 2018, Mr Williamson responded by letter saying:

> Please note that my email dated 7/2/18 was not a refusal, but contained a request for postponement due to the timing.
>
> Quote from letter: "I confirm my intention to decline by way of postponement, the occupational assessment scheduled with a Keith Innes Murray for 2 March 2018".
>
> The primary reason for this being that recent assessments by Doctor Michael Anderson (specialist physician in occupational medicine) and Doctor Rueben Johnson neurosurgeon) demonstrate ongoing failure to control head pain and other factors, which mean an assessment at this time would be premature and inappropriate.
>
> I note that the proposed new appointment is earmarked for the much later dated of 20/3/18. As that is some five weeks away (in which time there could foreseeably be a significant improvement) improvement), I suggest you touch base with me early March to establish if the position described above has altered or not.

[17] On 15 February 2018, the Corporation wrote to Mr Williamson again. The letter included the following:

> ACC is responsible to progress your rehabilitation to help you restore your health, independence and participation to the maximum extent possible (section

> 70 of the AC Act 2001). ACC have made a reasonable request to arrange these vocational assessments to help assess your ongoing rehabilitation needs, and assess what types of work may be sustainable for you in the future, fully considering the effects of your injury. It remains unclear if and when you will be able to resume your pre injury employment role, hence we need further assessments to plan ongoing rehabilitation.
>
> If a client unreasonably refuses or fails to comply with the reasonable request, ACC can decline to provide any entitlement which the client is otherwise eligible, unless they do comply.

[18] Mr Williamson wrote to the Corporation again and requested a meeting to "clear the air and discuss any and all plans, matters and protocols going forward". Further discussions took place, and it was agreed that a further meeting would be scheduled for 12 April 2018.

> On 12 March 2018, Mr Williamson again wrote to the case manager. The letter included the following:
>
> Proposed Meeting with ACC
>
> In regard to the proposed meeting between myself and ACC (yourself as case manager and a manager), I note that this meeting was not able to occur due to the inability of the office to commit to any of the proposed dates offered.
>
> As a follow up to this, I advise that I still wish this meeting to go ahead and advise for you to allow for an additional person (Cathy from the Brain Injury Association), who will attend in an advocacy/overview role. …
>
> Vocational Medical Assessment
>
> Of a more pressing matter, I draw your attention to the proposed assessment scheduled to occur with Doctor Martin Robb for 20 March 2018.
>
> I note that I have already cooperated with an initial phase of a vocational skills assessment, and that the above planned assessment is a vocational medical assessment meeting as part of the overall vocational independence process.
>
> I draw your attention to the ACC Act which provides for such an assessment to only occur when the rehabilitation plan is complete, and where vocational independence is "likely".
>
> I also draw your attention to the Supreme Court case of McGrath v ACC[1] where the Supreme Court decision of McGrath v ACC under section 110(3) of the Act 2001 clarified the Act as follows ...
>
> "ACC must not require a claimant to participate in a vocational independence assessment unless the claimant is likely to achieve vocational independence, and not before the claimant has completed any vocational rehabilitation plan."
>
> ... Accordingly, I assert that the commencement of the vocational independence process is inappropriate due to the above conditions not being satisfied.

> Furthermore, it would appear that the continuation of this process at this time would render you (ACC) liable as complicit to a breach of the Act, as clarified by the Supreme Court.
>
> Accordingly, I request that the proposed assessment be deferred until such time as the requirements of due process have been met.

[19] On 15 March 2018, the ACC case manager responded by email to Ms Cathy Matthews, Mr Williamson's support person with the Brain Injury Association of Otago:

> Hi Cathy
>
> Thanks for your email. I am glad that I was able to explain some things. I have booked a room for one hour on 12/04/2018, and I will talk to Claudine about another team manager to sit in on the meeting in her absence.
>
> On his definitely NOT had an IMA yet. If he had, we would certainly not ask him to do another one. I have listed the assessments that he has had in date order below ...
>
> I know it may seem like Owen has seen a lot of different people now, but this is due to the complexity of his injury, and the need to have several different experts involved for the concussion programme and then the pain management programme. Each person he has seen to date has a different expertise.
>
> The IMA (initial medical assessment) as explained yesterday, is completely different from anything we have done to date. It will specifically look at what jobs identified in the initial occupational assessment are likely to be medically sustainable in the future following a period of rehab, and what type of rehab ACC need to put in place for Owen to be able to achieve this. This could be further hands-on treatment such as physio, and it could also include upskilling type of vocational rehab.
>
> If we are unable to get the IMA underway, then it makes it very difficult to be able to move forward with rehab, and therefore we really do need Owen to attend the IMA on 20/03/18 with Doctor Martin Robb. I assure you that the IMA is only the start of the vocational independence process, and we wouldn't move any further until we are sure that ALL rehab has been completed after that.

[20] Ms Matthews responded by email the same day as follows:

> Good morning Danielle
>
> A very thorough explanation much appreciated. I will contact Owen later in the day in regards to the IMA.

[21] On 16 March 2018, the Corporation's case manager followed up with an email to Mr Williamson:

> In response to your letter dated 15/03/2018, if I have not explained it as well as I could have, then I apologise, however I do not see a contradiction in my statements, or certainly this was not my intention. If there is, I am simply trying to explain the process to you as best I can. The IOA and the IMA are the first steps of the vocational independence process. As per my earlier emails, you would then complete a period of vocational rehab before moving any further within the process.
>
> Owen, you are correct – the IOA and IMA are part of the vocational independence process, and I have never (or at least not intentionally) tried to imply otherwise. The IOA and IMA are the first steps of this process, but any decision regarding your vocational independence cannot and would not be made until all of your rehab has been completed, and then you complete further testing following your rehab.

[22] On 16 March 2018, the Corporation's case manager followed up with a further email to Mr Williamson and Ms Matthews:

> Dear Owen and Cathy
>
> Cathy, thank you for your earlier phone call and correspondence with regards to the IMA planned for 20/03/2018 with Doctor Martin Robb in Dunedin. I have had a chance to discuss this with my team manager, Claudine, and we believe that ACC's request for Owen to attend an initial medical assessment at this time is reasonable, and therefore we ask if Owen please attend this appointment on 20/03/2018 as initially planned.
>
> For the OIA and IMA, as per my previous email and explanations, has been put in place to help identify potential job options, based on Owen's transferrable skills, work history, qualifications and medical abilities. It will also identify what rehab ACC needs to put in place to turn a potential job into a reality. Without this assessment, we are unable to move forward and help Owen, and therefore it is a really important part of his rehab and responsibility while receiving ACC's assistance.

[23] Ms Matthews responded by email the same day as follows:

> The VIA role is about trying to improve communication and understanding and improve on the relationship between claimant and ACC.
>
> Because of previous interactions with ACC, Owen has developed a distrust of ACC. This is one of the reasons for the meeting on 12 April is to get clarity about the rehabilitation plan and future assessments, so Owen is not surprised and you, as ACC representative, are able to work through the process you need to. ...
>
> While you provided an excellent explanation about the difference with the earlier one being a medical review, while the next is an IMA, that is not what Owen understood he was attending. After seeing the letter that Owen supplied last night, I can certainly understand his confusion about this initial medical assessment. The letter from ACC dated 8/9/17 clearly stated it was an

> independent medical assessment, it did not say a medical review. Can you please provide BIA with the report Doctor Robb has previously done.
>
> Because of this confusion, I request the assessment that is set for 20/3 with Doctor Robb is deferred until after the meeting planned for 12th April. This will allow all issues to be discussed properly and an agreed plan forward. I think this would be a good way of avoiding unnecessary litigation. Please advise ASAP if this is a possibility.

[24] Mr Williamson telephoned the Corporation the same day. The Corporation's report of the telephone call is as follows:

> Client advised that he was required to attend an IMA this coming Tuesday. Client advised he was seeking to review this requirement, client was advised that this was not a decision, hence did not carry the right of review. Client was seeking how to extract a review decision from this. He advised that in the court case *ACC v McGrath* it was displayed that ACC could not request a client to enter into the VI process unless it is clear they could be vocationally independent, he believed in this case at this time he wasn't in that position. However this may change. Hence, ACC were in breach of the law and a Supreme Court ruling. Client accused me of not assisting him and being obstructive and quoted the code to me, he advised that he may take this to resolutions ...

[25] On 19 March 2018, Mr Williamson again emailed the case manager raising a variety of matters, including the issue of travel costs to attend the appointment on 20 March 2018. This was responded to by Ms Hesson, team manager at the Corporation. Her response included the following:

> As we have discussed previously, you have completed the initial occupational assessment, and now we have arranged an initial medical assessment for tomorrow (that Danielle has arranged an emergency payment of advance travel funding for you to attend). This has been agreed after changing the provider at your request.
>
> These initial assessments form part of the vocational rehabilitation process, helping us understand what rehabilitation is needed for your covered injury to help your recovery, and to fulfil our obligations to provide sufficient rehabilitation to help you either back to your pre-injury employment type, or an alternate employment role, that suits your prior work experience and skills.
>
> You have referenced the McGrath case – this does not apply at this initial stage of vocational rehabilitation. Tomorrow's assessment is just part of the initial assessment phase of what is needed for your rehabilitation. Once the assessments are complete, we meet and discuss your options for suitable ongoing rehabilitation and agree on your rehabilitation plan moving forward. (I note your meeting scheduled for 12 April – but we are able to do this sooner if you prefer. We have sent a draft rehabilitation plan to be fully discussed and agreed on at our meeting, which can be amended, and added to depending on

> the rehabilitation needs that are assessed – I am happy that you defer signing this until we meet in person.)
>
> When your vocational rehabilitation has been completed, you would meet again with ACC and discuss that and discuss the final vocational independence assessment process (this is what the McGrath case relates to). We are not at this stage yet, and would fully discuss this at that point.

[26] On 20 March 2018, Mr Williamson and Ms Matthews attended at Dr Robb's surgery in Dunedin. Mr Williamson presented the following document to Dr Robb and asked him to sign it. Ms Matthews' recollection is that Mr Williamson said to Dr Robb "before you start, I have a letter of awareness to give you and if you can sign that would be great". The document read as follows:

> NOTICE
>
> Before you proceed with this assessment I have a moral obligation, if not a legal duty, to disclose the following to you.
>
> It is my view that proceeding with this assessment breaches the Supreme Court ruling as set out below.
>
> On the basis that is correct, I provide you with awareness to the possibility that continuing with the assessment may make you complicit in an illegal act.
>
> It is not essential that you sign this statement as read (as I have personally provided it to you in front of the abovenamed witness, but signing it as read, would be appreciated, for my own records.
>
> The following excerpts from correspondence to ACC capture the concerns well ...
>
> (a) (Concern number 1) I record that you have been referred to the Supreme Court clarification ruling addressing ACC procedure and requirements, that outline the requirements to be met before ACC initiate a vocational assessment procedure (McGrath v ACC). The two main requirements determined by the Supreme Court are that vocational independence must be "likely", and that the "rehabilitation plan" is complete.
>
> (b) It is noted that your response to this concern (that you believe "independence is likely") has no basis in fact. Indeed, even simple pain control remains elusive.
>
> (c) I note that the Supreme Court, in making its ruling, apparently referred to the complete process of initiating vocational assessment, not just the final vocational assessment, but I would be happy to be convinced otherwise if clarification from the Supreme Court provided a contrary view.
>
> (d) It is noted that we agree that an "initial independent medical assessment" (IMA) is indeed part of the vocational independence process. This fact acknowledged by you, adds weight to the likely contempt of court should the assessment proceed on the scheduled date.

(e) (Concern number 2). I record that you have been reminded (in writing) that the execution of my rehabilitation plan is not completed, and that the completion of the rehabilitation plan is one of the pre-requisites that the Supreme Court clarified as necessary to initiate the vocational independence process.

I note you have completely failed to respond to this concern.

(f) You have also failed to indicate that you have followed due process by failing to take such action (as for example) seeking and providing legal, or Court opinion to satisfy the above two concerns surrounding the Supreme Court ruling.

(g) I must assume therefore you must either be in agreement with me to the meaning of the Supreme Court ruling, or have simply overlooked due process. I record that you have simply not responded to this concern.

(h) Accordingly, I repeat my request that these matters be addressed prior to the scheduled 20th March assessment, or

(i) In the absence of the comprehensive addressing of these concerns prior to the meeting occurring, I repeat my request that the purposed assessment scheduled for 20th March be postponed until they are addressed, in accordance with the ACC Code of Conduct and the Code of ACC Claimants Rights.

(j) I should have no need to remind you that flippantly breaching a ruling of the Supreme Court is a very serious matter that has the potential to bring ACC into disrepute.

I advise that response from ACC can be condensed to the following two points ...

(1) That the rehabilitation plan that we have been working under these past weeks and is almost complete, is in fact not a rehabilitation plan (because it is not signed by me). Therefore the rehabilitation plan is complete, because the previous rehabilitation plan is complete.

(2) That the Supreme Court ruling does not apply to an IMA even though ACC has confirmed it is the first step in vocational independence process (refer to “C” above).

Read by Doctor Martin Robb

20 March 2018 ...

Signed ...

Signature witnessed Cathy Matthews ...

Signed ...

OR

Witnessed as served to Doctor Martin Robb ...

Signed ...

> Date ...
>
> Time ...

[27] Ms Matthews' statement of evidence goes on to say:

> The Doctor had a brief look at the letter, said he wasn't going to sign anything that looked legal. He was a doctor there to help people, not a lawyer. The Doctor then asked BIA [Brain Injury Association] if they would sign and they also declined, advising that they had to get advice before signing anything potentially legal. Doctor made some comment about the previous assessment he had done being good and Mr Williamson agreed in part it was.
>
> Owen accepted this, saying something along the lines of no worries, it doesn't need signed and said he was happy to proceed with the assessment. …
>
> Following that, Mr Williamson said very clearly again that he was happy to proceed with the assessment. Doctor replied that he wasn't prepared to continue with the assessment and indicated the appointment was finished, so we left.

[28] In his statement of evidence dated 10 October 2022, Dr Robb said:

> Mr Williamson and Ms Matthews arrived on time. Before any assessment could commence, Mr Williamson handed me a document that had the word "notice". He asked me to sign this two page legal document before the IMA assessment started. I could tell he had written the document himself.
>
> I read through it and it made reference to the IMA being illegal and that he might sue me for being complicit with some illegal activity.
>
> I explained to him that I was not willing to sign the document or to go ahead with the assessment. I explained to him that I am a doctor who helps people get better. I said I was not a lawyer and I did not feel comfortable in completing the assessment in the circumstances.
>
> My impression was that Cathy Matthews was not very happy with Mr Williamson.

[29] On 23 March 2018, the Corporation wrote to Mr Williamson confirming that his entitlements to weekly compensation would be suspended. The letter included the following:

> We advised you that we may stop providing entitlements on your claim if you did not attend your initial medical assessment (IMA) with Doctor Martin Robb on 20/03/2018 and you did not give a reasonable explanation for this. Doctor Robb was unable to complete the IMA with you and we consider your communication with him prior to the assessment was unreasonable.
>
> We have now suspended your entitlement to weekly compensation effective immediately. We will restart your entitlements when you attend the initial

> medical assessment. Payment will only be backdated in exceptional circumstances.

[30] Further emails were exchanged. Mr Williamson responded to contend that he did not consider the notice to be unreasonable and that it was simply a "letter of awareness". He confirmed that it was Dr Robb who decided not to proceed with the meeting. Ms Matthews also confirmed with the Corporation that it was Dr Robb who made the decision not to proceed and that Mr Williamson should not be penalised.

[31] On 19 December 2022, at the hearing of the appeal in the District Court, at Mr Williamson's request, extracts from a 2012 TV3 documentary programme on the Corporation were played. The portions played highlighted the allegation that the Corporation chose medical assessors to get the reports that they were looking for at the expense of the claimant. The excerpts also included portions of interviews with a Corporation representative and a lawyer, Mr Schmidt, who practiced in the jurisdiction and who was of the view that the Corporation "stacked" their assessors to get the reports that they were looking for. Following the playing of these excerpts, Mr Williamson submitted that, after that programme had been aired, Dr Robb had been identified as one who wrote reports favourable to the Corporation.

[32] Ms Cathy Matthews from the Brain Injury Association of Otago, who attended the hearing with Mr Williamson, provided a full statement of her dealings with Mr Williamson, including her attendance with him at the meeting with Dr Robb on 20 March 2018. She confirmed what occurred at the doctor's surgery and stated that ultimately Mr Williamson said that he was happy to proceed with the assessment, but that Dr Robb was not prepared to continue with the assessment

Relevant law

[33] 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.

[34] In *O'Neill*,[2] 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 …;
>
> (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 …;
>
> (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 …;
>
> (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 … .

[35] In *Cullen*,[3] the Court of Appeal stated the following principles applying to the grant of special leave to appeal:

> [5] … The Court will exercise this power if satisfied that there is a serious question of law capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of a further appeal. Other relevant considerations include the desirability of finality of litigation and the overall interests of justice. The primary focus is on whether the question of law is worthy of consideration.

The Court's judgment of 20 February 2023

[36] Judge McGuire noted that Mr Williamson had suffered a severe accident on 2 March 2017, resulting in a concussive head injury as a result of being impaled while raking hay on his brother's farm, for which he was granted cover.

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2 *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

3 *Cullen v Accident Compensation Corporation* [2014] NZCA 94, affirmed in *Accident Compensation Corporation v Anderson & O'Leary Ltd* [2023] NZCA 198, at [18].

[37] Judge McGuire addressed Mr Williamson's allegation that Dr Robb was one of the medical professionals used by the Corporation who were not objective in their reports and for mercenary reasons had a bias towards its position.

[38] Judge McGuire found the allegation to be unfounded on the facts and evidence in this case. His Honour referred to Dr Robb's medical case review in respect of Mr Williamson's injuries dated 13 September 2017, which appeared to be fair and careful. His Honour added that Dr Robb's position appears to have been supported by that of Dr Anderson, Pain Specialist, who reported on 29 January 2018.

[39] Judge McGuire then addressed the communications between the Corporation and Mr Williamson leading up to his appointment with Dr Robb. His Honour was unable to accept Mr Williamson's criticisms of the Corporation and found that the communications from the Corporation to Mr Williamson were courteous and fair.

[40] Judge McGuire then addressed the notice that Mr Williamson presented to Dr Robb on 20 March 2018. His Honour found that it was unreal to have expected Dr Robb to do anything other than what he did do, namely, to call off the assessment. His Honour questioned what else a thinking person could reasonably do in such circumstances, when told that to have proceeded meant breaching a ruling of the Supreme Court and that it was a very serious matter.

[41] Judge McGuire found that, in these circumstances, the doctor's refusal to carry out the initial medical assessment was choreographed by Mr Williamson and that, objectively, what he did, set out to achieve this and he was successful in that goal. His Honour referred to *Parker*,[4] where Judge Joyce QC considered an appeal where the appellant had refused to let an occupational physician undertake a physical examination, thereby thwarting the assessment. In assessing the claimant's conduct, His Honour stated:

> [39] Obviously enough, the Court's determination as regards reasonableness or otherwise of claimant conduct must be an objective one and thus not in any way held ransom to any particular, mayhap idiosyncratic, views harboured by an individual claimant.

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4 *Parker v Accident Compensation Corporation* [2013] NZACC 39.

[42] Judge McGuire agreed with Judge Joyce's assessment and, for the reasons set out, found that it applied to this case. Objectively, therefore, His Honour found that Mr Williamson bore sole responsibility for the initial medical assessment by Dr Robb not having occurred. His Honour found therefore that Mr Williamson breached his obligation under s 72(1)(d) of the Act to undergo assessment by a registered health professional specified by the Corporation, when reasonably required to do so.

[43] Finally, Judge McGuire addressed the Corporation's decision of 23 March 2018. His Honour found, notwithstanding the above findings, that the Corporation's written notice to Mr Williamson regarding suspension of his weekly compensation "effective immediately", failed to take account of section 117(2), which provides that the Corporation must give the claimant written notice of the proposed suspension or calculation within a reasonable period before the proposed starting date.

[44] Judge McGuire found that, to comply with s 117(2), the Corporation's notice should have provided for a reasonable period which, in the circumstances of this case was 21 days, to elapse before the commencement of the suspension of weekly compensation. In the Corporation's letter of 23 March 2018, no reasonable period was given before the suspension of his entitlement to weekly compensation.

[45] Accordingly, Judge McGuire stated that the appeal was allowed to the extent that the commencement of the suspension of Mr Williamson's entitlement to weekly compensation was changed from 23 March 2018 to 13 April 2018, resulting in Mr Williamson being entitled to a further three weeks of weekly compensation. Such change gives him a reasonable period before the proposed starting date of the suspension, as provided for by section 117(2). To this extent only, the appeal was allowed and the Corporation's decision of 23 March 2018 was amended accordingly.

The appellant's submissions

[46] Mr Williamson's submissions cover a range of matters, which include matters not relevant to this appeal. In summary of the relevant submissions, Mr Williamson objects to his treatment by the Corporation, and rejects the findings of the Reviewer

and Judge McGuire. Mr Williamson submits that he was compliant with section 72(1)(d) of the Act. He asserts that, on 20 March 2018, he met all of my obligations stated in the Act, and that Judge McGuire erred when he upheld a suspension of entitlements.

Discussion

[47] This Court puts to one side issues raised by Mr Williamson which are not relevant to this appeal.

[48] The assessment of Mr Williamson's vocational rehabilitation needs, related to his accident, is governed by section 90 of the Act. This section requires that the assessment must consist of (a) an initial occupational assessment to identify the types of work that may be appropriate for the claimant; and (b) an initial medical assessment to determine whether the types of work identified under (a) are, or are likely to be, medically sustainable for the claimant. Mr Williamson underwent an initial occupational assessment, and the Corporation then required him to undergo an initial medical assessment.

[49] Section 117(2)(d) of the Act provides that a claimant who receives any entitlement must, when reasonably required to do so by the Corporation, undergo assessment by a registered health professional specified by the Corporation, at the Corporation's expense. The essence of Mr Williamson's case is that he complied with this provision.

[50] Judge McGuire found that Mr Williamson bore sole responsibility for the initial medical assessment by Dr Robb not having occurred, and therefore Mr Williamson did not comply with section 117(2)(d) of the Act. Judge McGuire's reasons for making this finding are noted above at paragraphs [40]-[42]. This Court finds, on its reading of the relevant evidence recorded, that His Honour's decision was correct and was one available to him based on the evidence presented.

The Decision

[51] In light of the above considerations, the Court finds that Mr Williamson has not established sufficient grounds, as a matter of law, to sustain his application for leave to appeal, which is accordingly dismissed. Mr Williamson has not established that Judge McGuire made an error of law capable of *bona fide* and serious argument. 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 and the finality of litigation. This Court is not satisfied as to the wider importance of any contended point of law.

[52] Costs are reserved.

Judge P R Spiller,
District Court Judge