

**NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF
NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF
THE APPLICANT REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 93/2016
[2017] NZSC 3**

BETWEEN J (SC 93/2016)
Applicant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Leave Hearing: 25 November 2016

Court: William Young, Glazebrook, Arnold, O'Regan and
Ellen France JJ

Counsel: A C Beck for Applicant
A S Butler for Respondent

Judgment: 9 February 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

(Given by William Young J)

[1] The applicant is in dispute with the Accident Compensation Corporation in relation to what she claims is an entitlement to weekly compensation. This dispute was resolved in her favour in the District Court¹ but that Court's decision was reversed on appeal by Nation J.² She now seeks leave to appeal direct to this Court against Nation J's judgment.

¹ *J v Accident Compensation Corporation* [2015] NZACC 222 (Judge Powell) at [19].

² *Accident Compensation Corporation v J* [2016] NZHC 1683, [2016] 3 NZLR 551 at [73]–[74].

[2] Primarily in issue is whether this Court has jurisdiction to entertain the proposed appeal.

[3] The appeal to the High Court which resulted in the judgment of Nation J was pursuant to s 162 of the Accident Compensation Act 2001. Section 163 provides:

163 Appeal to Court of Appeal on question of law

- (1) A party to an appeal before the High Court under section 162 who is dissatisfied with any determination or decision of the Court on the appeal as being wrong in law may, with the leave of the High Court, appeal to the Court of Appeal by way of case stated for the opinion of that court on a question of law only.
- (2) If the High Court refuses to grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.
- ...
- (4) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

[4] Section 163 was enacted prior to the establishment of this Court and can be fairly taken to reflect the view that the Privy Council should not be troubled by appeals which were against, or consequent upon, decisions of the High Court under s 163.

[5] The applicant relies on s 8 of the Supreme Court Act 2003:³

8 Appeals against decisions of High Court in civil proceedings

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the High Court against any decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal; or
- (c) the decision was made on an interlocutory application.

³ In identical terms see s 69 Senior Courts Act 2016, which comes into force on 1 March 2017, per s 2.

[6] The Supreme Court Act was preceded by the report of the Advisory Group, *Replacing the Privy Council: A New Supreme Court*.⁴ The Advisory Group was of the view that the jurisdiction of the Supreme Court should be comprehensive.⁵ Associated with this, it recommended a review of statutory appeal rights:⁶

The group considers that the various statutes limiting appeals to the Court of Appeal and other courts should be analysed to determine whether there should be any exceptions to the general principle that any matter should be able to be appealed to the Supreme Court with the leave of that Court.

[7] The Supreme Court Bill, as introduced, contained a schedule which corresponds to sch 1 of the Supreme Court Act which inserts references, and rights of appeal, to the Supreme Court in a number of statutes.⁷ Plainly there must have been a review along the lines contemplated by the Advisory Group but whether it was completely comprehensive is unclear. What is primarily significant for present purposes is that no amendments were made to the appeal provisions of the Accident Compensation Act.

[8] Clauses 7(a) and 8(a) of the Supreme Court Bill as introduced (which later became ss 7(a) and 8(a)) excluded rights of appeal to the Supreme Court when “an enactment other than this Act makes provision to the effect that the decision is final or binding”. When the Justice and Electoral Committee reported back on the Bill, there was a majority recommendation that these words be struck out and replaced by the present words.⁸ The reasons for this change are of no moment for present purposes. What is important is that this change, along with the legislative history to which we have referred, shows that the legislature was well aware that there continued to be appeal restrictions which would prevent certain judgments being challenged in the Supreme Court.

⁴ *Replacing the Privy Council: A New Supreme Court* (Office of the Attorney-General, April 2002).

⁵ At [64]–[72].

⁶ At [71].

⁷ Supreme Court Bill 2002 (16-1), sch 1.

⁸ Supreme Court Bill 2002 (16-2) (Select Committee Report) at 51.

[9] In cases which concern jurisdiction, this Court has taken a reasonably expansive approach. For instance, in *Guo v Minister of Immigration* the Court observed:⁹

In interpreting the Supreme Court Act on the issue of jurisdiction, our approach is to consider whether the statutory language clearly restricts the Court's jurisdiction. If it does not, that is a powerful indicator that the Court has jurisdiction.

In that case – unlike the present – the relevant statute contemplated appeals to this Court.¹⁰

[10] Under s 163, there would ordinarily be no scope for an appeal to the Supreme Court (or, prior to 2004, the Privy Council) against a High Court judgment given under s 162. The section contemplates that a party dissatisfied with such a judgment will seek leave from the High Court for an appeal to the Court of Appeal and, should such leave be declined, special leave from the Court of Appeal. A decision by the Court of Appeal either declining special leave to appeal or on the appeal (if leave is granted) is final. In the event of such a “final” judgment being delivered, an appeal to this Court would obviously be precluded. While s 163 of the Accident Compensation Act does not, in terms, exclude other rights of appeal against s 162 judgments, such exclusion might be thought implicit.

[11] We were taken by counsel to a number of authorities, including *Guo, De Morgan v Director-General of Social Welfare*¹¹ and *Vukomanovic v Residence Review Board*.¹² The last of these cases dealt with a statutory scheme under ss 115 and 116 of the Immigration Act 1987 which was substantially the same as that in issue in this case. A leave panel of this Court concluded there that the scheme “plainly excludes any right of appeal to this Court arising from judgments of the High Court”

[12] If there is provision for an eventual appeal to the Supreme Court from judgment of the Court of Appeal, s 8(a) allows a leapfrog appeal and thus the

⁹ *Guo v Minister of Immigration* [2015] NZSC 76, [2015] 1 NZLR 732 at [17].

¹⁰ At [18].

¹¹ *De Morgan v Director-General of Social Welfare* [1997] 3 NZLR 385 (PC).

¹² *Vukomanovic v Residence Review Board* [2011] NZSC 15.

compressing of what would ordinarily be a two stage appellate process into one. But, in cases such as the present and *Vukomanovic* – where the Act provides for an appeal only to the Court of Appeal and not for a further appeal from the Court of Appeal to the Supreme Court – substituting an appeal to the Supreme Court for the appeal to the Court of Appeal would be contrary to the general scheme of the appeal provisions. That was the approach adopted in *Vukomanovic* and we propose to apply it.

[13] Accordingly, the application for leave to appeal is declined. The applicant being legally aided the respondents do not seek costs.

Solicitors:
Peter Sara, Dunedin for Applicant
Russell McVeagh, Wellington for Respondent