ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION OR IDENTIFYING PARTICULARS OF THE APPLICANT REMAINS IN FORCE

IN THE SUPREME COURT OF NEW ZEALAND SC 93/2016

BETWEEN **J**

Applicant

AND **ACCIDENT COMPENSATION CORPORATION**

Respondent

Hearing: 25 November 2016

Coram: William Young J
Glazebrook J
Arnold J
O'Regan J
Ellen France J

Appearances: A C Beck for the Applicant
A S Butler for the Respondent

LEAVE APPLICATION FOR HEARING

MR BECK:

May it please Your Honours. I appear for the applicant in this matter.

WILLIAM YOUNG J:

Thank you.

MR BUTLER:

May it please Your Honours. Butler for the Corporation.

WILLIAM YOUNG J:

Thank you Mr Butler. Mr Beck.

MR BECK:

I just did want to raise the issue of name suppression for the applicant which was granted by the High Court.

WILLIAM YOUNG J:

I don't think there's a problem. That order probably applies anyway.

MR BECK:

I think it does. I just noted that the registrar called by name.

WILLIAM YOUNG J:

We're not always as punctilious as perhaps we should be about referring to people by name. I mean we, it's in the Court, but I think you can assume that her name is suppressed in terms of any judgment.

MR BECK:

Yes, thank you Sir.

GLAZEBROOK J:

And also in terms of any reporting of the hearing, the name suppression order still applies.

MR BECK:

Yes, yes, thank you Your Honour.

GLAZEBROOK J:

That was for their benefit in case there's anybody wanting to report it.

MR BECK:

A reporter, yes, yes. Now I note Your Honours have referred to the *De Morgan v Director-General of Social Welfare* [1997] 3 NZLR 385 (PC) cases as something which should be regarded as relevant to this hearing. The approach taken by the applicant is that this Court, in looking at its jurisdiction, has tended to adopt an expansive approach towards its jurisdiction, and it did that in the family relationship property case of *Nation v Nation* [2005] NZSC 14 at quite an early stage, and moved in, more in its own direction than in the direction which had been taken by the Privy Council, but –

WILLIAM YOUNG J:

Sorry, what happened in *Nation*. Have we got *Nation*?

MR BECK:

We haven't got it, Your Honour, I just refer to it because it was one of the cases that looked at *De Morgan* in the context of the Supreme Court.

WILLIAM YOUNG J:

Okay, so that was a, had that started in the Family Court, I can't remember?

MR BECK:

Yes, that's right Your Honour.

WILLIAM YOUNG J:

And so it was a question whether the – but had the legislation been changed by the time *Nation v Nation* came along?

MR BECK:

There had been a change to legislation but it hadn't specifically provided for appals to the Supreme Court, so the section 67 provisions in the Judicature Act 1908 were applicable, that the second appeal provisions, and saying that the Court of Appeal decision was final, so that was the question as to whether that governed appeals which had started in the Family Court, and

the Supreme Court held that it didn't, that the Supreme Court Act 2003 had superseded what was said in *De Morgan* in regard to Family Relationship Property matters.

WILLIAM YOUNG J:
Okay, well we've heard a number of cases like that, I can't remember it ever being suggested there was a jurisdictional issue. Sorry, but you haven't got, we can look up *Nation*. I don't think leave was granted in *Nation*, was it?

GLAZEBROOK J:
Yes it was but it settled.

WILLIAM YOUNG J:
I see, okay.

MR BECK:
But my principal reliance is on *Guo v Minister of Immigration* [2015] NZSC 76, [2015] 1 NZLR 732 where this Court undoubtedly adopted an expansive approach to its jurisdiction and took the line that there needs to be statutory language clearly restricting the Court's jurisdiction in order to take it away, and I say that in *Guo* this Court went to some lengths to find that it did have jurisdiction, even to the extent that it acknowledged that there may have been an oversight in the legislation but nevertheless that wasn't what governed the fact that there was clearly no restricting provision was the important thing as far as the Court's jurisdiction was concerned. And I'd say that that expansive approach to jurisdiction is wholly appropriate for a Court in the position of this Court. Because of its constitutional significance as the ultimate judicial authority in New Zealand, if there is a possibility for the Court exercising jurisdiction then, in my submission, it's not appropriate for the Court to restrict that itself, when the legislature hasn't specifically taken the jurisdiction away from the Court. So I say that the way the Court looked at its jurisdiction in *Guo* is wholly appropriate and in accordance with the nature of this Court as the ultimate judicial authority.

So my submission is that there isn't that clearly restricting language in this case. There's no provision that specifically says that the Court cannot hear an appeal from the High Court in Accident Compensation matters and in that respect it has some similarities with *Guo* because in that case there was no provision that specifically said that this Court couldn't hear an appeal from a lead decision made in relation to the High Court decision. So the Court was prepared to take that absence of a clear restriction as an authority to proceed with it.

So my submission is that the same approach ought to apply here. I say that obviously it's a jurisdiction that would not be exercised unless there were a sufficiently significant case to justify that appeal from the High Court to the Supreme Court and that's obviously a significant control on the sort of matters that would ever be accepted by this Court in the direct appeal. But I say in this case there is a sufficiently important and significant matter and particularly that the case involves the interpretation of the Court's decision in *Allenby v H* [2012] NZSC 33, [2012] 3 NZLR 425, and how far that extends within the confines of the Accident Compensation legislation. Ultimately it's a statutory interpretation question but the statutory interpretation that this Court has adopted of ACC matters, in cases such as *Allenby* has been particularly significant, and my submission is that the best Court to interpret how *Allenby* should be construed in the particular situation here, the consequences and effects of the failed sterilisation, is properly a matter for this Court, that it's a matter which has significant policy ramifications and which has attracted the attention of the highest Courts in other jurisdictions –

ARNOLD J:
What is the impact of the granting of leave to appeal to the Court of Appeal, which you now have?

MR BECK:
Obviously there shouldn't be two appeals going on at the same time, so the applicant's position is that she would not pursue the appeal to the

Court of Appeal if this Court were to grant leave. So there would be no possibility of any parallel decision.

ARNOLD J:

Do you accept that if the appeal was heard by the Court of Appeal its decision would be final, or would you argue that there's an appeal here nevertheless?

MR BECK:

The language there is fairly plain in terms of the Accident Compensation Act 2001, it's difficult to get past the statement that the Court of Appeal's decision is final.

WILLIAM YOUNG J:

So what happens, if we grant leave, and the Court of Appeal has, Justice Nation has already granted leave to the Court of Appeal, would it all turn on which Court would go on with the case first?

MR BECK:

That's what I say. We can't have two going on at the same time so the applicant would give away any rights to the Court of Appeal if this Court were to grant leave.

GLAZEBROOK J:

Would you suggest that's made a condition of leave being granted if leave were granted?

MR BECK:

That could certainly be the case, Your Honour, yes.

WILLIAM YOUNG J:

What makes this case special, other than the fact that if the Court of Appeal hears it, there won't be an appeal.

MR BECK:

That it involves, in my submission, broad policy considerations as to how the Accident Compensation Act ought to apply and matters which were raised, and in fact brought into relief by the Court's decision in *Allenby* so that it's a matter –

WILLIAM YOUNG J:

Lots of cases in the Court of Appeal involve broad policy issues and, you know, the appeal structure and the act of leave to appeal and leave to appeal, would suggest that by the time an ACC case gets to the Court of Appeal it is likely to involve a reasonably refined by important issue of law.

MR BECK:

That's right Your Honour but by the same token there's no reason why this Court couldn't say, well this, given the history of this type of matter, and the way in which these issues have come before this Court before, it is appropriate for this Court to consider the matter, rather than the Court of Appeal. It's obviously somethign the Court has control over. The Court can decide whether or not it does wish to hear those matters, but I say that it's, that there's no difference in the number of appeals that would be involved. It's simply a question of which Court ultimately hears the matter, and I say that this Court is best placed to interpret how its decision in *Allenby* should be construed here. That's the essence of my submissions Your Honour.

WILLIAM YOUNG J:

Thank you. Mr Butler.

MR BUTLER:

Your Honours, I'm grateful. You've had the benefit of my written submissions so I thought what I might do is just really talk to the main points that we were trying to raise in those submissions. It seemed to me if we talk about *Guo* – when I read *Guo*, when my learned friend says what *Guo* stands for is a broad

proposition that unless explicitly this Court's jurisdiction is excluded by a statutory provision then jurisdiction should be found to exist. That's not, with great respect to my learned friend, how I read *Guo*. I think when one looks at *Guo* what one sees is a focus on the scheme of the legislation and there is a number of distinguishing features between the regime under the Accident Compensation legislation and the Immigration Act 2009 scheme that was before this Court in *Guo*, and there are also, with respect, a number of distinguishing factual matters that I think make *Guo* inapplicable, so I thought I might just quickly highlight those.

In this particular case the relevant statutory provision does describe the Court of Appeal's decision as being final, not just on leave but also on substantive issues. So I think that's an important different feature of the statutory scheme that's present here. Similarly unlike in *Guo*, one of the factors I think that was quite significant for this Court in *Guo* was the fact that the statutory scheme there actually contemplated that this Court would be exercising jurisdiction. So the Act said, so this Court was able to say well, look, even though the Act doesn't expressly confer a right of appeal to this Court, it is clear from provisions within the Immigration Act that appeals will be coming to this Court, and it took that as an important textual indicator as to jurisdiction.

In contrast to the Immigration Act the ACC Act provides for, and I've dealt with this in some detail in my written submissions, provides for a very extensive review and appeal process. So it's probably worth repeating. A decision is made by the Corporation. Somebody can then seek to have that decision reviewed. There will be a non-statutory review process undertaken internally within ACC to see whether that decision is correct or not. It then goes on, the statutory review process undertaken independently through FairWay Resolution Limited, which is entirely independent of ACC, and I've set out all the provisions relevant to that. It then goes to the District Court, then with leave it can go to the High Court, and then with further leave to the Court of Appeal. So this isn't a situation, in my submission, comparable to *Guo* where in many ways you had one shot, and that's all that one had. Here

you've got a scheme set out by Parliament, which seeks to, in my submission, balance access to justice, but also finality and the channels that have been chosen by Parliament are the channels that I've outlined.

O'REGAN J:

But the, what's proposed here by the applicant doesn't actually increase the number of tiers, does it, because he's really suggesting that this Court should hear the appeal as a substitute for the Court of Appeal, not as an addition to it?

MR BUTLER:

Yes, but it's a curious thing the way in which he's going about it, because this was one of the points that I was going to make. When I was looking at the many cases that this Court has issued on leave and where the Court has contemplated whether it might grant leave in a particular case, what's interesting for me, on my reading of those cases, and I'm talking about cases like *White v Auckland District Health Board* [2007] NZSC 64, *Colman v Attorney-General* [2013] NZSC 52, [2013] 2 NZLR 495, *Burke v Superintendent of Wellington Prison* [2005] NZSC 46, *Yan v Commissioner of Inland Revenue* [2015] NZSC 170, there's any number of them, Your Honours will be far more familiar than – I'm now a lot more familiar with them in preparation for today than perhaps I had been before, but a common feature of all of those is that leave had not been granted to appeal to the Court of Appeal. So really again it was last, if I can use a colloquialism, it was last chance saloon. That's not the situation that we are in here.

GLAZEBROOK J:

No, but the issue is whether it is more appropriate for this Court to hear it than other Courts for instance say there'd been two contradicting decisions in the Court of Appeal on a similar point. One might say in that case that there are exceptional circumstances that would suggest that's the very case that should come before this Court in order to fix up the anomaly between the two decisions for instance.

MR BUTLER:

I hear Your Honour's point but, with respect, I wouldn't accept it. I think the Court of Appeal would well know that if there were two conflicting authorities from the Court, that they would need to be reconciled, or the Court would need to constitute itself.

GLAZEBROOK J:

One understands that, it's just whether the Court of Appeal is the most appropriate vehicle to do that or whether this Court, in terms of Mr Beck's announcement. Obviously leave would be granted in that case by the Court of Appeal one would certainly assume.

MR BUTLER:

Exactly.

GLAZEBROOK J:

But whether that Court is the best place or whether this Court is the final Court is the better place because of course it could be the Accident Compensation Commission itself may actually wish to challenge a decision of the Court of Appeal in those circumstances, which is usually what happens when statutory bodies fight tooth and nail to stop jurisdiction and they find the next case that comes is the one the very one that they wish to take to this Court.

MR BUTLER:

Well Your Honour probably has more experience of that than I do. I can assure Your Honour –

GLAZEBROOK J:

Well it's just the Inland Revenue Department is a case in point.

MR BUTLER:

That's a different, I certainly have never found myself working for Inland Revenue.

GLAZEBROOK J:

And one might say one thinks it serves them right, not in terms of appeals to this Court but…

MR BUTLER:

Quite. The point I want to make is that the opposition that's been advanced here is a principled one against the backdrop of the statutory scheme that's been advanced. The problem, if I can call it that, the issue that Your Honour has raised is one which, in my submission, can be dealt with through the ordinary processes of the Court of Appeal for exactly the reasons Your Honour has referred to, which is you would absolutely expect the Court of Appeal to grant leave in a situation like that, and then the Court would constitute itself in such an appropriate way as to be able to deal with that issue. So again I suppose what I'm saying I suppose is if there's a problem there's a solution. The solution isn't by granting jurisdiction to this particular Court, because again look at the difficulties that that can raise. So here in this situation what we've got is we've got an application being made simultaneously to the High Court for leave, had it been denied perhaps special leave would have been sought, and at the same time being sought from this particular Court and it feels like a race against, the great chase or something like that going on, and I think when you stand back and consider is it really the scramble, just scramble to the Court, is that really the process that Parliament had in mind, or contemplated as being appropriate for matters of this sort. I say no. I say that the common sense, to pick up the phrase that was used by Their Lordships in the *De Morgan* case, the common sense approach is the one which recognises the scheme as I've outlined it and which says there's no jurisdiction for this Court in relation to appeals of that sort.

Now in terms of the scheme, I hadn't quite finished. There was an additional point that I thought might be just worth noting in terms of the scheme under the Accident Compensation Act, and that goes to the issue of money, which of course I know is an issue that matters to a lot of people and the Courts aren't immune to that issue, and that's section 164. So if you look at my casebook it's tab 1, last page of tab 1. The heading is, "Recovery of costs of appeals".

One of the peculiarities of the ACC system, that Your Honours may not be aware of, is that ACC picks up the tab for the running of the appeals system. And there's agreement reached between ACC and Ministry of Justice in terms of how the cost-sharing is undertaken. I just simply note again, if Parliament had contemplated that the Supreme Court was to have jurisdiction in relation to these matters, it would be odd that the Supreme Court would sit outside the cost recovery principle that's outlined in section 164. But clearly it might sit outside the cost recovery system because the only way this Court could have jurisdiction is not under Part 5 of the Act, but rather, based on the argument advanced by my learned friend Mr Beck, under the Supreme Court Act itself. So again I'm just advancing that another textual indication as to why my submission, Parliament's made the choice, and that choice is to exclude the jurisdiction of this Court.

Now I have wanted to come back to the point that while it's been something that's been offered up to you by my learned friend Mr Beck, well look if I can have my twin track, I can have my scramble to the Court, and I can, my twin track, a smorgasbord of Court possibilities and I'll make an application to the High Court for leave, and to the Supreme Court for leave at the same time, if I get, both Courts seem to be interested, I get to choose. That's effectively what he's saying. It's his choice as to which forum he wishes to choose in that type of setting. Again it just, that just doesn't feel right.

GLAZEBROOK J:
Well he doesn't really, in the sense that both are subject to leave. And presumably anybody who applies here wishes to come here rather than the Court of Appeal, and that is obviously something that's contemplated by Parliament in the Supreme Court Act, that you can leapfrog. Obviously you're not going to be able to leapfrog unless there are very, very good reasons to do so.

MR BUTLER:
Sure.

GLAZEBROOK J:

Which is where the exceptionality comes into that provision.

MR BUTLER:

That's right. That's a point fairly made Your Honour. But it does bring me back, I suppose, to the point that I touched on and outlined at the outset which was looking at the earlier cases what appears to happen is that the Court, this Court I mean to say, when considering leapfrog appeals of this type, typically has done so, for example, after the intermediate Court, the Court of Appeal, has been asked for leave under, or the High Court has been asked for leave to allow an appeal to go to the Court of Appeal.

WILLIAM YOUNG J:

Normally say no then if it's been refused.

MR BUTLER:

Often this Court does –

WILLIAM YOUNG J:

I think almost always. I mean *Guo* is not really an exception. It's a very odd statutory scheme but I don't think there'd be any cases where leave has been granted for a leapfrog appeal here where leave to appeal to the Court of Appeal has been refused.

MR BUTLER:

And it's difficult for me as counsel doing those researches because, of course, where leave is granted, you don't particularly have to give reasons, so I can't, I simply wanted to raise it. I, as counsel, am not aware. I did my best through researchers to see if I could see whether it had ever been, occurred. Certainly all the cases I've read, obviously because leave has typically been refused and therefore Your Honours issue judgments, are ones where what Your Honours have done is you've considered quite carefully what the reasons are that have been granted, and you've therefore, reasons have been

given for not granting leave and so, well look we tend to agree. Again the point I'm just trying to make is it seems to be a –

WILLIAM YOUNG J:

Okay well I agree to some, that may provide some support for you because a reason for saying no is that to grant leave here would subvert the apparent scheme of appeals provided for by the legislation in question.

MR BUTLER:

Yes, correct.

WILLIAM YOUNG J:

But it's a pretty general point. Okay.

MR BUTLER:

Okay so they were the main points that I wanted to highlight really here and I take it that Your Honours have read the relevant provisions, obviously, of the ACC scheme and understand where it is that the Corporation is coming from.

WILLIAM YOUNG J:

Can you just go back to section 164 for a minute. Why would that not, if we would hear an appeal, why wouldn't the –

MR BUTLER:

Because the appeal wouldn't be under this part.

WILLIAM YOUNG J:

Oh I see. Okay.

MR BUTLER:

They are the critical words and that's why I say that those words reaffirm, you know, and if you look at a scheme as being, I'm going back I suppose to Sir Ivor's way of looking at all of the –

WILLIAM YOUNG J:

Yes, I know, I understand that point. I understand that point now sorry.

ELLEN FRANCE J:

And there was nothing in the legislative, in the debates at the time of the legislation relating, enacting the Supreme Court Act that might suggest or help in this?

MR BUTLER:

No I couldn't find anything except the following exchange, Your Honour, which is that, and it's a point I make, if you look at the Supreme Court Act and the, you look at the appeals, there are other Acts, so an example would be the Employment Relations Act 2000, so I just wanted to very briefly touch on that because I know that a number of the cases where this Court has said, well look we do, leapfrog appeals are allowed, you know, even where, for example, the Court of Appeal has declined leave, for example, the cases often refer, a case often referred to in that context is *White* but in my submission a case like *White* is quite distinguishable because the relevant provisions of the Employment Relations Act section 214A I think it is, specifically contemplates the bifurcated route. You can go one way or the other. And that goes to my point about saying well Parliament at the time, in 2003, went through a process, which I submit a careful process, of deciding, particularly in respect of relatively complex statutory appeal processes, which ones it wanted to amend to allow scope for Supreme Court appeals and others are just left, and the reason that I, so I say that's something of significance, and I also say it's of significance that the scheme is an extensive scheme for review and appeal, and I think that does make it different from cases like *Guo* where the opportunity for a person to be able to ventilate their issues and have the questions of law considered, are simply not as extensive as Your Honour knows.

GLAZEBROOK J:

Can I just, which I did mean to ask you about the anomaly that that creates really with judicial review. So that if this had started as a judicial review then it would come here by leave.

MR BUTLER:

That's right, Your Honour, absolutely. That's the nature of the way in which –

GLAZEBROOK J:

But it creates an incentive for people to take judicial review as against going through what one would assume are probably the normal processes that are more suited to the, the questions being asked.

MR BUTLER:

With respect I don't agree Your Honour and that's simply because people have got procedural choice. So people choose to go through the Part 5 review and appeal processes, the steps that are available to people are known in that process and, of course, the Courts do protect careful appeal and review processes in determining whether or not judicial review is appropriate. So it is true that obviously this Court has dealt with ACC matters by way, that came on judicial review, I'm thinking in particular obviously of the vocational assessment case, but that was one in respect of which a review and appeal was not available under Part 5.

WILLIAM YOUNG J:

Did the appellant in *McGrath v ACC* [2011] NZSC 77, [2011] 3 NZLR 733 have a right of review and appeal under the ACC Act?

MR BUTLER:

No, no.

WILLIAM YOUNG J:

But wasn't that the sort of decision that she was challenging?

MR BUTLER:

Exactly, that's right, so it was a different decision, that's the point I was making, is that *McGrath* is about a different form of decision, which is not subject to the appeal and review decisions, so that's why in my submissions I was careful to outline what it is, so decisions in terms of under Part 5 are decisions about cover and entitlements. The vocational assessment process is one which is not covered by Part 5. That's why it started off with a judicial review and then in the usual way those processes are available at three levels. The High Court, the Court of Appeal, and with leave this Court. So, and the point, just to round that out Your Honour, just in answer to your question of people making those choices, of course, the way in which the system, you compensate, the ACC system works is that you take your review even, for example, if you get to review, the fair way, resolution review, you'll get your costs, even if you lose, so long as you took your claim reasonably. It was reasonable for you to do so. So again seeing the way the scheme works as a whole it's really important to understand that, why it is that Parliament could be content to leave the package of review and appeal right as it is, that a choice as to whether or not this Court should have jurisdiction, the choice it made, I say, is to exclude and it seems to me, not that this Court necessarily wants to second-guess Parliament's choice as to whether it's rational or not, but I say it is rational. So in other words there's no need for you to, with respect, clamp on, you'll understand why I say "clamp on" coming from my perspective, clamp on an additional level –

GLAZEBROOK J:

Except it isn't an additional level.

WILLIAM YOUNG J:

In all fairness it's an alternative level.

MR BUTLER:

In these circumstances. Now we turn to exceptionality, so I've talked about jurisdiction, but of course even if there were jurisdiction the question becomes whether this is an appeal that should come to this particular Court. I've set

out in my written submissions why, in my submission, that is not, it is not the case. My learned friend makes some reference to the overseas Courts that have considered these issues. Let me be quite clear, my learned friend was not counsel in the Court below. It was made explicitly clear, to His Honour Justice Nation, that there was no reliance being placed by J, I'm going to refer to the applicant as J, by J on those cases. It was acknowledged in the High Court that those cases were, at most, interesting, but not relevant for the purposes of statutory interpretation of the scheme that we've got. And I say, with great respect, my learned friend really has not pointed to anything which say that this Court is the Court that is better placed and the right forum for consideration of the issues that arise in respect of this appeal, particularly where leave has already been granted by the High Court for the Court of Appeal to consider this matter.

He makes some reference to the *Allenby* case. Of course *Allenby* was about cover, not entitlements. This case is not about cover. This case is about entitlements so it's not about the interpretation of *Allenby*, this Court was very clear in *Allenby* that what it was dealing with was a question simply of cover. In fact the Corporation has proceeded on the assumption that there is cover. The question is what entitlements flow, having recognised cover. So interpretation of the decision of *Allenby* simply will not arise on the appeal so that basis for this Court considering the matter is simply not one which, in my submission, arises.

Now there were other matters that my learned friend raised in his written submissions and I've dealt with them in my written submissions, page 8 and page 9, and I don't know whether Your Honours need me to touch on them, obviously disagreement between the District Court Judge and the High Court Judge. It happens all the time.

O'REGAN J:

It does happen, yes.

MR BUTLER:

It hardly seems exceptional, one might say it's pretty ordinary. I've dealt with *Allenby*. I've dealt with the point about the fact that some common law claims have been dealt with by some Courts overseas and I explained why that doesn't apply here and equally there's nothing to suggest that Justice Nation's judgment wasn't a through consideration of the issues and wouldn't provide an appropriate platform for the Court of Appeal to be able to consider the issues.

So, Your Honours, I don't know whether there's anything further you'd like to hear from me on?

WILLIAM YOUNG J:

No, thank you Mr Butler.

MR BUTLER:

Thank you Your Honours.

WILLIAM YOUNG J:

Is there anything you want to say in reply Mr Beck?

MR BECK:

Your Honours, I just wanted to refer to paragraph 20 of the *Guo* decision because in my submission that shows that this Court focused very closely on the wording of the statute rather than any broader considerations of statutory scheme, and in that paragraph the Court pointed out that the Act didn't explicitly exclude jurisdiction in respect of the particular decision under consideration there, and said, "While this may well be an oversight, which at least in the immigration context has now been remedied, we consider that we have jurisdiction given the absence of a clear prohibition." Now the fact that the legislature took the opportunity to change the law, showing that there wasn't an appeal in that situation, suggests that it wasn't what the legislature had had in mind. This Court, however, was prepared to accept jurisdiction because that hadn't been expressly restricted at the time, and I say that's an

indication as to the expansive approach that's appropriate for this Court to adopt in such cases.

The only other thing I wanted to say was, Your Honours, I just wanted to confirm that legal aid has been granted to the applicant for this appeal so there is a grant of legal aid in place.

WILLIAM YOUNG J:
Thank you.

MR BECK:
As Your Honour pleases.

GLAZEBROOK J:
That obviously has an effect on the application, which I must say I thought was slightly cheeky given the section 164 for costs on this application.

MR BECK:
No, the 164 just relates to the position between the Ministry and ACC. It has nothing to do with the Courts.

GLAZEBROOK J:
Okay.

MR BECK:
The respondent here has said that it doesn't seek costs if legal aid has been granted.

GLAZEBROOK J:
Right.

WILLIAM YOUNG J:
Thank you Mr Beck. We'll take time to consider our judgment and deliver it in writing in due course.

COUR ADJOURNS: 10.40 AM