IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2008-485-2617

IN THE MATTER OF	an intended appeal under s162 of the Injury Prevention, Rehabilitation and Compensation Act 2001
BETWEEN	KAYE ALLISON MARTIN Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 5 August 2009

Counsel: A C Beck for applicant
A D Barnett for respondent

Judgment: 7 August 2009

RESERVED JUDGMENT OF RONALD YOUNG J

Introduction

[1] Mrs Martin suffered a neck strain and resulting pain in 1998. She was accepted for cover under the Accident Compensation Scheme shortly afterwards. The Corporation concluded she was vocationally independent in 2003. The appellant challenged that decision unsuccessfully, both by review and then by appeal to the District Court.

[2] Dobson J granted special leave to appeal from the District Court on 9 April 2009, on the following grounds:

a) Did the District Court, either in reliance on the decision in *Ramsay v Accident Compensation Corporation* [2004] NZAR 1, or otherwise, afford undue weight to the opinion of the original medical assessor, because of the statutory recognition of the position of such a medical assessor, or otherwise?

b) If the answer to the first question is yes, did that cause the outcome of the appeal before the District Court to be wrong?

[3] The fundamental point raised in this appeal can be expressed in this way. The process for assessing vocational independence for a person who has cover under the Accident Compensation Scheme is set out in s 108 of the Injury Prevention, Rehabilitation and Compensation Act 2001 (the IPR Act). It involves the Corporation obtaining an occupational and medical assessment, and based on those reports making a decision as to whether the individual concerned is vocationally independent.

[4] In this case, the medical assessor, Dr Antoniadis, in March 2003 assessed the appellant as having vocational independence. Subsequently, reports from the appellant's GP and Dr Hancock were provided questioning that decision. In July 2003, Dr Antoniadis, having had the chance to consider this further information, still considered the appellant was vocationally independent. The Corporation, therefore, accepted Dr Antoniadis' conclusions about vocational independence.

[5] The appellant says the Review Officer and the District Court Judge (on appeal) gave primacy to Dr Antoniadis' report and concluded that other medical evidence provided by the appellant did not overcome the primacy of this evidence.

[6] The first ground identified in the application for leave to appeal focuses on this question. The appellant says the Review Officer and the District Court Judge wrongly gave primacy to the medical assessor's report, because the report had been obtained under s 108 and was therefore a statutory medical assessor's report. The appellant's case is that the Review Officer and the District Court Judge, in contrast with the Corporation, must have regard to all the medical evidence, without any preconception as to value, to decide if the appellant is vocationally independent. This they failed to do.

[7] The second question on which leave was given essentially raises the point that if the District Court Judge had given all the medical evidence appropriate weight, would that have affected the outcome of his deliberations?

Facts

[8] The basic facts are set out in the appellant's submissions as follows:

> 9. The appellant suffered a neck strain in 1998, and was diagnosed with a chronic pain syndrome. She was accepted for cover under the accident compensation legislation.
>
> 10. The appellant was assessed by several medical specialists, including Dr Anderson in 2001. She was diagnosed as having substantial ongoing pain issues affecting her work capacity. The need for a work trial was identified.
>
> 11. An initial occupational assessment was undertaken in May 2002, and an initial medical assessment was completed in August 2002.
>
> 12. The appellant had a work trial with the Dunedin City Council, during which she worked for a maximum of 22.5 hours per week.
>
> 13. A vocational independence occupational assessment was undertaken by Mr Berry in March 2003.
>
> 14. The vocational independence medical assessment was completed by Dr Antoniadis on 25 March 2003.
>
> 15. Dr Antoniadis certified that the appellant was able to work 35 hours or more per week in an occupation which avoided heavy lifting or any prolonged or repetitive hand tool or keyboard use.
>
> 16. The appellant obtained a medical report from Dr Hancock in June 2003. Dr Hancock expressed the view that the appellant was not vocationally independent.
>
> 17. A reviewer found that the medical assessment by Dr Antoniadis was not "flawed", and upheld the respondent's decision.
>
> 18. The review decision was based entirely on the principles outlined in *Ramsay v Accident Insurance Corporation* [2004] NZAR 1, holding that the medical assessment could only be set aside if the assessor was not qualified, if mandatory matters were not taken into account, or if the assessment was shown to be flawed (para 7). The reviewer held that the assessment was not flawed, and that Dr Hancock's view was no more than a "conflicting opinion" (para 18).
>
> 19. The appellant appealed to the District Court, and the appeal was dismissed on 2 August 2005.

The law

[9] Vocational independence is defined in s 6 of the IPR Act as follows:

> **vocational independence**, in relation to a claimant, means the claimant's capacity, as determined under section 107, to engage in work—
>
> (a) for which he or she is suited by reason of experience, education, or training, or any combination of those things; and
>
> (b) for 35 hours or more a week.

[10] The process to be followed in assessing vocational independence is set out in s 108 as follows:

> **108 Assessment of claimant's vocational independence**
>
> (1) An assessment of a claimant's vocational independence must consist of—
>
> (a) an occupational assessment under clause 25 of Schedule 1; and
>
> (b) a medical assessment under clause 28 of Schedule 1.
>
> (2) The purpose of an occupational assessment is to—
>
> (a) consider the progress and outcomes of vocational rehabilitation carried out under the claimant's individual rehabilitation plan; and
>
> (b) consider whether the types of work (whether available or not) identified in the claimant's individual rehabilitation plan are still suitable for the claimant because they match the skills that the claimant has gained through education, training, or experience.
>
> (3) The purpose of a medical assessment is to provide an opinion for the Corporation as to whether, having regard to the claimant's personal injury, the claimant has the capacity to undertake any type of work identified in the occupational assessment and reflected in the claimant's individual rehabilitation plan.

[11] In this case, we are solely concerned with the medical assessment. Clause 27 of the First Schedule of the IPR Act identifies who is qualified to undertake the assessment. It provides as follows:

27 Medical assessor

(1) A medical assessment must be undertaken by a medical practitioner who is described in subclause (2) or subclause (3).

(2) A medical practitioner who provides general medical services must also—

(a) have an interest, and proven work experience, in disability management in the workplace or in occupational rehabilitation; and

(b) have at least 5 years' experience in general practice; and

(c) meet at least 1 of the following criteria:

(i) be a Fellow of the Royal New Zealand College of General Practitioners or hold an equivalent qualification:

(ii) be undertaking training towards becoming a Fellow of the Royal New Zealand College of General Practitioners or holding an equivalent qualification:

(iii) have undertaken relevant advanced training.

(3) A person who does not provide general medical services must also—

(a) have an interest, and proven work experience, in disability management in the workplace or in occupational rehabilitation; and

(b) be a member of a recognised college.

[12] Clause 28 identifies what information the assessor is to have access to when the assessor makes a decision. It provides:

28 Conduct of medical assessment

(1) A medical assessor undertaking a medical assessment as part of an assessment of a claimant's vocational independence under section 108 must take into account—

(a) information provided to the assessor by the Corporation; and

(b) any individual rehabilitation plan for the claimant; and

(c) any of the following medical reports provided to the assessor:

(i) medical reports requested by the Corporation before the individual rehabilitation plan was prepared:

(ii) medical reports received during the claimant's rehabilitation; and

(d) the report of the occupational assessor under clause 26; and

(e) the medical assessor's clinical examination of the claimant; and

(f) any other information or comments that the claimant requests the medical assessor to take into account and that the medical assessor decides are relevant.

(2) The Corporation must provide to a medical assessor all information the Corporation has that is relevant to a medical assessment.

[13] Thus, if the Corporation concludes that the person who has cover is able to work for 35 hours per week in employment in which she or he is suited, then the Corporation may determine he or she is vocationally independent.

The review and appeal decisions

[14] The application for review came before the Review Officer on 1 August 2003, and the decision was released on 28 August 2003. In that decision, the Review Officer, relying upon John Hansen J's analysis of the significance of the medical assessor's statutory report as identified in *Ramsay v Accident Insurance Corporation* [2004] NZAR 1, concluded that there was no material flaw in the medical assessment made under the Act. As to the contrary medical opinion by Dr Hancock, he said:

(17) Dr Hancock simply appears to base his opinion on Mrs Martin's vocational independence on which she has told him and the fact that she apparently was unable to sustain her work trial for more than 15-20 hours per week. However, that is not sufficient and certainly Dr Hancock has not shown any material flaw in the assessment of Dr Antoniadis...

(18) Whilst I cannot possibly say with any degree of confidence whether or not Dr Hancock was "over-sympathetic" to Mrs Martin's level of pain, nevertheless his examination findings were very brief when compared with Dr Antoniadis' full and thorough assessment and he does not show why the assessor's opinion was somehow flawed and/or wrong; rather, Dr Hancock's report was no more than a "conflicting" opinion and this is not sufficient (Mrs A (182/2002) and Cooper (44/2003)).

[15] In *Ramsay*, John Hansen J was considering the Accident Insurance Act 1998, however its provisions relating to vocational independence assessments are closely similar to the current provisions. Part of the headnote to *Ramsay* adequately summarises John Hansen J's view regarding the Corporation's approach to medical assessments obtained for the purpose of assessing vocational independence. It said:

> (3) Under s 89 of the Accident Insurance Act 1998 the Corporation could at its discretion assess an insured's capacity for work according to the procedure in ss 93 to 100 which included an assessment by a registered medical practitioner with the qualifications stated in s 98 of the Act. There was no evidence that R's expert was properly qualified under s 98 but his report could be placed before the medical assessor for consideration (s 99). There were limited circumstances where the Corporation could go behind the medical assessor's assessment such as where the assessor was not properly qualified under s 98, failed to take into account matters required by s 99, the report did not contain information required by s 100 or evidence showed that decision was wrong. R's application for special leave was dismissed because he did not show that the assessor's decision was wrong or cogent evidence to the contrary.

[16] The appellant's complaint is the John Hansen J's observations about the proper approach for the Corporation have become a mantra for reviewers and the District Court on appeal to avoid a proper appellate look at the question of whether the claimant is, or is not vocationally independent. The appellant says reviewers and the District Court have wrongly assumed that there are "limited circumstances" in which they can go behind the medical assessment.

[17] In the District Court, the Judge considered the reports of the medical assessor, Dr Antoniadis, and Dr Hancock as well as the information from the appellant's GP and an earlier assessment of pain undertaken by Dr Anderson. In his judgment, he detailed the background facts, the law and the appellant's and respondent's submissions as to the effect of Dr Hancock's opinion on the assessment. He concluded:

> [47] I have endeavoured to stand back and consider the appellant's submissions against the background and the assessments provided. The initial medical report supports, in my view, the findings of the medical assessor on the issue of pain and the ability to work for 35 hours or more. The comments made to the medical assessor are also important on this issue: she seemed to indicate that she would be able to perform both these two job types. Certainly, the medical assessor considered in detail the issue of the hours to be worked on more than one occasion.

> [48] Certainly, the appellant has the skills and experience to perform the designated job options. I agree that the concentration should be on the two jobs designated, and not necessarily on the job options that were not certified. On reading the assessments in a realistic way against the background of all the facts I can see no flaw in them. The opinion of Dr Hancock is only a contrary opinion and does not provide cogent evidence that the medical or occupational assessments were flawed.

[18] The appellant says these conclusions illustrate that the Judge did give primacy to Dr Antoniadis' report, inappropriately following *Ramsay*. They illustrate the appellant says that the Judge approached the case on the basis that the medical assessor's report was correct unless the other medical evidence could establish it was flawed. The appellant says the Court of Appeal in *Wildbore v ACC* (2009) 19 PRNZ 239 (CA) made it clear that the District Court's approach to such an appeal requires a consideration of all relevant evidence, an evaluation of the evidence and an assessment of the merits accordingly. The District Court Judge's approach, the appellant says, was in conflict with the approach of the Court of Appeal in *Wildbore* and more broadly the Supreme Court's approach in *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 to appeals.

[19] The Corporation's case is that if the Judge's decision is looked at as a whole he does not give the medical assessor's report unconsidered primacy. The respondent says the Judge's decision does analyse all medical opinions and reach a conclusion based on that assessment.

[20] The Corporation accepts however that an appellant, at the review and District Court appeal level, is entitled to a rehearing on the merits consistent with *Austin Nichols* and *Wildbore* and a judgment given accordingly.

Discussion on legal issues

[21] The appropriate starting point is *Wildbore*. There are obvious factual similarities between *Wildbore* and this case. In *Wildbore*, the vocational assessment made under s 108 concluded the claimant was vocationally fit. After the assessment, Mr Wildbore obtained an opinion from Dr Hancock. He concluded that Mr Wildbore was not vocationally independent. He reached this conclusion based

on the results of a work trial and the effects of Mr Wildbore's chronic pain. The Court first considered what was the correct approach to appeals from the Review Officer to the District Court. It said:

> [29] The correct approach to s 149 appeals is as follows. First, the District Court is required to come to its own conclusion on its assessment and evaluation of the evidence, and the merits generally. Where the District Court has a different opinion from that of the reviewer, it would be an error of law for it to defer to the reviewer's assessment of the acceptability of, and weight to be accorded to, the evidence rather than forming its own opinion, although the District Court is entitled to have regard to what the reviewer said and give it such weight as he or she thinks appropriate. This conforms with the approach to general appeals enunciated by Elias CJ, for the Court, in *Stichting Lodestar*:
>
> > Those exercising general rights of appeal are entitled to judgment in accordance with the opinion of the appellate Court, even where that opinion is an assessment of fact and degree and entails a value judgment. If the appellate Court's opinion is different from the conclusion of the tribunal appealed from, then the decision under appeal is wrong in the only sense that matters, even if it was a conclusion on which minds might reasonably differ. In such circumstances it is an error for the High Court to defer to the lower Court's assessment of the acceptability and weight to be accorded to the evidence, rather than forming its own opinion. [Para 16]
>
> [30] Secondly, the onus of establishing that the reviewer is wrong is on the applicant for review. To adopt the actual language of the Supreme Court in *Stichting Lodestar*:
>
> > the appellant bears an onus of satisfying the appeal Court that it should differ from the decision under appeal. It is only if the appellate Court considers that the appealed decision is wrong that it is justified in interfering with it. [Para 4]

[22] As to this case they said:

> [33] The essential question is whether it can be seen that the Judge turned his or her own mind objectively to all the relevant evidence, and came to an independent view. We are of the view that it is quite plain on the face of his judgment, when read as a whole rather than isolating phrases, that Judge Cadenhead did so.

[23] The Court then considered in detail the judgment of the District Court and illustrated how the Judge had reached an independent view of all of the relevant competing medical evidence. They said:

> [40] Fourthly, in the Judge's opinion, the evidence was "all one way", with the exception of Dr Hancock's evidence. Yet the Judge had hardly adopted a slavishly deferential stance to Dr Kerr as the "paramount medical

assessor". Indeed, Dr Hancock's evidence had been considered in a deliberative fashion. For example:

> when Dr Hancock's opinion is considered;
>
> (a) In the context of a different factual basis to that originally reported by the appellant himself;
>
> (b) Against two treating physicians, who specifically dealt with the appellant's pain issues; and
>
> (c) Against the objective available evidence relating to the work trials,
>
> that his report cannot place any doubts on the appellant's ability to sustain work for more than 35 hours per week. [Para 67]

[24] To return, therefore, to the beginning of the vocational assessment process. The Corporation has a statutory process to follow, set out in s 108, to assess vocational independence. It is obliged to follow that process. The process includes a detailed description of who may undertake a medical assessment (clause 27) and what information they should have to make the assessment (clause 28).

[25] Presumably these statutory provisions are designed to ensure a predictable process for each assessment, and with quality safeguards. This process avoids the suggestion that the Corporation can pick a medical practitioner it considers may favour it, whatever the suitability of his or her qualifications and standing.

[26] Section 108(2) identifies that the purpose of the medical assessment is to provide an opinion to the Corporation. As this Court observed in *Ramsay*, given the reasons behind the statutory process, the Corporation will typically accept the opinion of the medical assessor unless it is flawed in the limited circumstances described in *Ramsay*. For example, where the assessor was not properly qualified or failed to take into account matters required of him, or if the report did not contain the required information.

[27] What is also intended to be avoided by the statutory scheme is the Corporation itself making another medical assessment outside of the assessment prescribed. If the Corporation has information which illustrates, for example, that the medical assessor did not have all relevant information, or the assessor

deliberately ignored relevant information, then the Corporation would be justified in refusing to accept the assessor's opinion. That would not justify the Corporation then reaching its own medical assessment. The statute makes it clear the medical assessment is to be undertaken only by a qualified medical assessor. As will commonly be the case, the only information before the Corporation will be from the medical assessor. In that situation, save any obvious inadequacy, the Corporation will be likely to accept that opinion. If the Corporation has concluded the medical assessment is flawed in the way identified it can refer the matter back to the medical assessor to fix the flaw or it may conclude that it cannot establish the claimant is vocationally independent. What it cannot do is conclude vocational independence based on an identifiably flawed assessment. This follows the conclusions in *Ramsay* as to the proper approach of the Corporation.

[28] If a claimant wishes to challenge the Corporation's decision, it may do so by seeking a review. Section 145 of the Act provides for such reviews:

> **145 Review decisions: substance**
>
> (1) In making a decision on the review, the reviewer must—
>
> (a) put aside the Corporation's decision and look at the matter afresh on the basis of the information provided at the review; and
>
> (b) put aside the policy and procedure followed by the Corporation and decide the matter only on the basis of its substantive merits under this Act.
>
> (2) However, on the review of a decision revised by the Corporation under section 65(1), the Corporation must establish that the decision revised under that subsection was made in error.
>
> (3) The reviewer must—
>
> (a) dismiss the application; or
>
> (b) modify the Corporation's decision; or
>
> (c) quash the Corporation's decision; or
>
> (d) direct the Corporation to make a decision within a time frame specified by the reviewer if the Corporation has not made the decision in a timely manner as contemplated by sections 54 and 134(1)(b); or

(e) make the decision for the Corporation if it has not made a decision in a timely manner as contemplated by sections 54 and 134(1)(b).

(4) If the reviewer quashes the Corporation's decision, the reviewer must—

(a) substitute the reviewer's decision for that of the Corporation; or

(b) require the Corporation to make the decision again in accordance with directions the reviewer gives.

(5) The reviewer may make a decision even though a person entitled to be present and heard at the hearing did not attend it unless, before the reviewer makes the decision,—

(a) the person gives the reviewer a reasonable excuse for the person's non-attendance; and

(b) the reviewer considers that a decision should not be made until the person has been heard.

[29] I note with respect to ss (1)(a) that it is common for the appellant to provide further medical reports after the determination of vocational independence and before the review.

[30] If there is dissatisfaction with the review decision an appeal to the District Court is allowed. Sections 155 and 156 identify the relevant features of such an appeal:

155 Hearing of appeal

(1) The following persons are entitled to appear at the hearing of the appeal and to be heard at it, either personally or by a representative:

(a) the appellant:

(b) any other person who had a right to be present and heard at the hearing of the review.

(2) An appeal is a rehearing, but evidence about a question of fact may be brought before the court under section 156(2).

156 Evidence at appeal

(1) The court may hear any evidence that it thinks fit, whether or not the evidence would be otherwise admissible in a court of law.

(2) If a question of fact is involved in an appeal, the evidence taken before or received by the reviewer about the question may be

brought before the court under any of subsections (3) to (5), subject to any order of the court.

(3) Evidence given orally about a question of fact may be brought before the court by the production of a copy of—

(a) the notes of the reviewer; or

(b) the reviewer's record of hearing; or

(c) a written statement read by a witness; or

(d) any other material that the court thinks expedient.

(4) Evidence taken by affidavit about a question of fact may be brought before the court by the production of any of the affidavits that have been forwarded to the Registrar.

(5) Exhibits relating to a question of fact may be brought before the court by—

(a) the production of any of the exhibits that have been forwarded to the Registrar; or

(b) the production by the parties to the appeal of any exhibits in their custody.

[31] As *Wildbore* identified this appeal by way of rehearing is intended to be a full reconsideration of all relevant material so that the District Court Judge can reach a conclusion as to whether the appellant is vocationally independent or not. The onus is on the appellant to show the decision is wrong. The appellant will be able to establish the decision is wrong if the Judge after considering all the evidence takes a different view as to vocational independence than the reviewer/Corporation.

[32] After discussion with counsel, as I understand the position of the Corporation, it accepts that the review by the Review Officer and the re-hearing by the District Court is more than simply a question of the officer or the court placing itself in the Corporation's position and deciding whether, on the limited statutory basis afforded to the Corporation, they were correct. To limit the appeal rights to the Review Officer and the District Court in this way would mean only a very narrow right of appeal and would effectively prohibit any appeal on the merits of the decision. This would leave the medical assessor's opinion in the circumstances in an extremely powerful position. As I understand the respondent's position, it accepts that a broader review of vocational independence is proper by both the Review

Officer and the District Court Judge. Thus the *Ramsay* factors ([15]) will be relevant only to the Corporation's decision making and not to the reviewer's function or the District Court appeal by rehearing.

[33] The District Court Judge's function on re-hearing, when dealing with the medical assessment, is to take all of the medical evidence, including that from the medical assessor and any other medical evidence into account in deciding whether or not the appellant is vocationally independent. In doing so, it will be inappropriate to give the medical assessor's opinion, simply by virtue of the fact that it is an opinion of the medical assessor, any pre-eminent position. In assessing the medical evidence, the reviewer and the District Court's job will be to apply a traditional approach to an analysis of the competing expert evidence. For example, how do the medical practitioner's particular qualifications and experience relate to the claimant's disability? What is the quality of the medical report, including the thoroughness of the detail. There will be a range of other factors that will be relevant in individual cases.

[34] Given the clauses 27 and 28 ([11], [12]), it could reasonably be expected that in most cases the medical assessor will be well qualified to express the opinions and that the report will be comprehensive. But there is no reason why, as a matter of logic, the appellant cannot have equally well qualified medical practitioners give equally comprehensive reports.

[35] I accept, in identifying this process as the appropriate review and appellate structure with regard to the vocational independence conclusion, that it has some unusual features. The review and re-hearing appeal will essentially be broader than the Corporation is able to undertake. Ordinarily, the first part of such a process would involve the widest fact finding process and subsequent appeals focus on narrower matters. Here however the statutory regime close defines the Corporation's function. It does so in a way that rightly confines what the Corporation can do. If therefore there is to be a merits based review of the conclusion that a claimant is vocationally independent, a wider assessment of the facts is inevitable at the review and appellate level.

[36] In summary, therefore:

a) when assessing vocational independence by the Corporation the *Ramsay* principles apply;

b) the review and any appeal to the District Court are to be determined according to the statutory review and appeal rights, *Wildbore* and *Austin Nichols*. The *Ramsay* principles have no application to such reviews or appeals to the District Court;

c) the approach in (b) therefore requires the reviewer or District Court to consider all the relevant evidence and to decide if they are satisfied the claimant is vocationally independent. The medical assessor's opinion is to be given no pre-eminence solely because of its statutory basis;

d) if the reviewer or District Court reach a different conclusion on the evidence as to vocational independence than the Corporation (or reviewer) then the decision is wrong, the obligation on the appellant met and a different decision should be substituted;

e) in assessing expert medical evidence factors such as (non-exhaustive) the extent and relevance of the practitioners qualifications and experience, the comprehensiveness of the evidence gathered, the quality of the report, where the preponderance of opinion lies and the validity of criticism of other medical opinions, will all be relevant in deciding the ultimate question.

Application to this case

[37] To apply this approach to the District Court Judge's decision.

[38] The respondent stressed that the Judge's conclusions ([17]) were effectively no more than a summary of his earlier findings. The Corporation submits that as

with the decision in *Wildbore* the Judge did undertake an analysis of the medical opinions and reached a conclusion based on that analysis rather than any assumption of pre-eminence of the assessors report.

[39] At [17] I set out in full the Judge's conclusions. The District Court judgment began with a record of the events which gave rise to the claim and then a description of the medical assessments and the vocational independence assessment. The Judge detailed the various medical reports without comment. He considered the review decision appealed from, the legislative and legal principles and then went on to consider the submissions by the appellant and respondent. The respondent submits that within the Judge's record of its submissions are findings and conclusions which are relevant to his assessment of the medical evidence.

[40] It is possible to read some of the Judge's observations under the heading of "The submissions of the respondent" as the Judge reaching a conclusion on the respective value of the medical evidence. However, it is also possible to read these same portions as no more than the Judge's record of the respondent's submissions. Given it is not possible to be sure about the Judge's intent the only safe approach is to assume all of the comments under the heading of the respondent's submission are indeed a record of the same.

[41] Thus the only analysis of the competing evidence is in [47] and [48] of the District Court Judge's decision ([17]) which does appear to indicate that a pre-eminence has been given to Dr Antoniadis' opinion without supporting analysis and Dr Hancock's opinion dismissed as "only a contrary opinion" also without appropriate analysis.

[42] My conclusion is therefore the Judge wrongly approached his appellate task in this case. The appellant is entitled to have her appeal decided according to law. The proper place for that is in the District Court under the s 155, 156 procedure.

[43] The appeal is allowed. The decision of the District Court quashed. The appeal from the reviewer is returned to the District Court for the appeal by way of rehearing to be reheard.

Costs

[44] If the appellant seeks costs it should file memoranda within fourteen days and the respondent in reply a further fourteen days.

Ronald Young J

Solicitors:
A C Beck, Barrister, PO Box 5601, Wellington, email: andrew.beck@xtra.co.nz
A D Barnett, Barrister, PO Box 3058, Wellington, email: adbarnett@xtra.co.nz