

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA772/2025  
[2026] NZCA 140**

BETWEEN                      TROY DUNN  
   Applicant  
  
AND                              ACCIDENT COMPENSATION  
   CORPORATION  
   Respondent

Court:                      Katz, Grice and Walker JJ

Counsel:                      Applicant in person  
   R L Roff for Respondent

Judgment:                      22 April 2026 at 3.00 pm  
(On the papers)

---

**JUDGMENT OF THE COURT**

---

- A The application for special leave to appeal is declined.**
- B The applicant must pay the respondent costs for a standard application on a band A basis, together with usual disbursements.**
- 

**REASONS OF THE COURT**

(Given by Grice J)

**Introduction**

[1] Mr Dunn filed a claim in the Human Rights Review Tribunal (the Tribunal) seeking damages and declarations that the Accident Compensation Corporation (ACC) breached s 66 of the Human Rights Act 1993 (HRA) by victimising him when he exercised his right to take steps to obtain his full ACC entitlements. The Tribunal

struck out his claim.<sup>1</sup> On appeal to the High Court, McQueen J dismissed his appeal and refused leave for a second appeal.<sup>2</sup> Mr Dunn now applies for special leave to appeal to the Court of Appeal.

[2] For the reasons that follow, the application for leave is declined.

## **Background**

[3] Mr Dunn injured his back in an accident in 2013. He received cover for treatment and rehabilitation under the Accident Compensation Act 2001 but was declined additional weekly compensation. A lengthy process of applications for review of ACC's decisions commenced culminating in a decision to reinstate and backdate his payments to January 2019. Mr Dunn lodged a complaint with the Human Rights Commission in November 2021 and subsequently filed a claim with the Tribunal claiming victimisation, which is a form of discrimination, under s 66 of the HRA. The Tribunal struck out his claim on application by ACC, who also alleged abuse of process against Mr Dunn.<sup>3</sup> Mr Dunn alleged victimisation in breach of s 66 of the HRA in respect of the exercise of his "protected rights". These were his rights to seek reviews of ACC decisions and make complaints under the Code of ACC Claimants' Rights. The Tribunal noted that the claim ran to 81 pages with 329 pages of appendices breaking down the allegations of victimisation.<sup>4</sup>

[4] Section 66 of the HRA states that it is unlawful for any person to treat another person less favourably than others because they have, or intend to make use of, their rights under "this Act" or,<sup>5</sup> among other things, "has otherwise done anything under or by reference to this Act".<sup>6</sup> Citing *Fehling v Appleby*, the Tribunal concluded that in the absence of any action taken under or by reference to the HRA, s 66 was not engaged.<sup>7</sup> In addition, the person who is responsible for the unfavourable treatment

---

<sup>1</sup> *Dunn v Accident Compensation Corporation (Strike out)* [2024] NZHRRT 41 [Tribunal decision].

<sup>2</sup> *Dunn v Accident Compensation Corporation* [2025] NZHC 2189 [High Court decision]; and *Dunn v Accident Compensation Corporation* [2025] NZHC 3388 [leave decision].

<sup>3</sup> Tribunal decision, above n 1, at [3] and [52].

<sup>4</sup> At [22].

<sup>5</sup> Human Rights Act 1993, s 66(1)(a)(i).

<sup>6</sup> Section 66(1)(a)(v).

<sup>7</sup> Tribunal decision, above n 1, at [36], citing *Fehling v Appleby* [2015] NZHC 75, [2015] NZAR 547 at [64].

must know the other person has taken action or intends to take action under the HRA. It concluded that the mere mention of the HRA in internal ACC documents or the Code does not provide the necessary connection contemplated by s 66.<sup>8</sup> The Tribunal noted that Mr Dunn's allegations did not give rise to any cause of action based on HRA victimisation, but rather they went to his dissatisfaction with ACC's decisions. It concluded that there was no reasonable cause of action disclosed in the claim and the defect could not be cured by amending the claim, and so exercised its discretion to strike the claim out under s 115A(1)(a) of the HRA.<sup>9</sup>

[5] Mr Dunn appealed to the High Court under s 123 of the HRA, which provides for a general right of appeal conducted as a rehearing on the Court's own assessment of the merits of the case. Mr Dunn argued on appeal that there was a reasonable cause of action for discrimination and victimisation, that the Tribunal breached natural justice in its decision, that his claim was not an abuse of process, and that the Tribunal has jurisdiction to hear his claim.

[6] McQueen J agreed with the High Court in *Fehling* that the exercise of rights or taking of action referred to in s 66 must be under, or by reference to, the HRA and not another statute. For Mr Dunn to be successful, his pleaded actions needed to be under the HRA and not the internal policies of ACC.<sup>10</sup> Her Honour rejected Mr Dunn's argument that because ACC did not provide services at some points for his injury it could be inferred that there was discrimination. While accepting it was conceptually possible to bring a claim of discrimination under the HRA against ACC, Mr Dunn was exercising his rights of review and appeal under the Accident Compensation Act and there was no connection between the actions alleged to be victimisation and the HRA.<sup>11</sup> The claim therefore disclosed no reasonable cause of action.

[7] Her Honour also concluded there was no breach of natural justice. The Tribunal had taken into account Mr Dunn's submissions and there was no evidence of

---

<sup>8</sup> Tribunal decision, above n 1, at [37]–[38].

<sup>9</sup> At [48]–[50].

<sup>10</sup> High Court decision, above n 2, at [41].

<sup>11</sup> At [43], referring to s 317(4)(b) of the Accident Compensation Act 2001 that provides for a claim where there is discrimination arising under any of the listed sections.

bias.<sup>12</sup> To allow the claim would be an abuse of process.<sup>13</sup> McQueen J noted that the amended statement of claim was “prolix, difficult to follow and not appropriately particularised so that there is no comprehensible case”.<sup>14</sup> In addition, the claim attempted to “circumvent the rights of review, appeal and remedies available under the Accident Compensation Act”.<sup>15</sup> The Judge concluded that the Tribunal had no jurisdiction to deal with the claim, which went to Mr Dunn’s dissatisfaction with ACC over his cover entitlements and case management.<sup>16</sup>

[8] McQueen J declined an application for leave to appeal on 7 November 2025.<sup>17</sup>

### **Approach on appeal**

[9] Appeals to this Court under the HRA are governed by s 124(3), which provides for leave to be granted if:<sup>18</sup>

- (a) the appeal involves a question of law;
- (b) the question of law is of general or public importance, or the appeal involves some other feature; and
- (c) the importance or feature means that an appeal is warranted.

[10] The Court on second appeal is not engaged in general error correction; the function is to clarify the law and determine whether it was properly construed and applied in the lower Court. Not every error alleged by an applicant will warrant intervention.<sup>19</sup>

---

<sup>12</sup> At [47]–[48] and [51].

<sup>13</sup> At [57].

<sup>14</sup> At [55].

<sup>15</sup> At [56].

<sup>16</sup> At [59]–[60].

<sup>17</sup> Leave decision, above n 2.

<sup>18</sup> The approach taken, and the three requirements above, are broadly similar to that for applications for leave to bring a second appeal: *Waller v Hider* [1998] 1 NZLR 412 (CA) at 413.

<sup>19</sup> At 413.

## **Special leave to appeal grounds**

[11] Mr Dunn's challenges to the High Court decision in both his notice of application and submissions are wide-ranging and often times confusing. Much of the submissions challenge the correctness of the High Court judgment generally. Other submissions allege multiple "questions of law", some of which are substantively challenges to the decision again, and others which are generic questions about the application of the HRA and Accident Compensation Act. The submissions are also repetitive, and in several places challenge the original Tribunal decision as well as the High Court decision.

[12] Mr Dunn's submissions broadly claim that:

- (a) There are conflicting decisions of the Tribunal on whether the "provision of services" in an ACC claim are "rights" under the HRA which needs to be resolved.
- (b) The Court should clarify whether ACC claimants who suffer disability from an accident "have human rights in an ACC claim".
- (c) The Tribunal's decision was discriminatory to Mr Dunn as a person with a disability, which renders it unfair. It was also biased. Related to this argument are suggestions that the High Court decision was biased and predetermined because McQueen J agreed with the Tribunal on many points, including the application of *Fehling*.
- (d) The Court should clarify whether the exercise of "protected rights" under the Accident Compensation Act are within the ambit of s 66, such that they are actions done under or by reference to "this Act" in the HRA.
- (e) The High Court misapplied existing case law. The High Court misapplied *Fehling* in holding that actions made under or by reference to "this Act" in s 66(1)(a)(v) must be under or by reference to the HRA and no other Act. Mr Dunn submits that *Fehling* supports his reading

of s 66 that other Acts can be relevant. He further submits that the Court misapplied the Supreme Court case of *Air New Zealand Ltd v McAlister*.<sup>20</sup>

- (f) The High Court introduced a new requirement into s 66 that an applicant must prove intent to “use” their human rights, which was incorrect and unfair as there was no opportunity for Mr Dunn to reply to the argument.
- (g) The High Court was wrong when it said that Mr Dunn had not pleaded discrimination. He claims that appealing the Tribunal’s decision was a pleading of discrimination and victimisation.

### **Analysis**

[13] Mr Dunn has failed to raise a question of law capable of bona fide argument and nor does he raise any matters which involve an element of interest, public or private, of such importance as to justify appeal.

[14] McQueen J applied the clear and well-established principles in relation to ss 105 and 123 of the HRA. No clarification is required on the interpretation of s 44(1) of the HRA or s 317(4) of the Accident Compensation Act. Further, there was no misinterpretation of s 66(1)(a)(i) or (v); the High Court was correct that it is the victim’s actions/intentions that are required to be under or by reference to the Act, which is the HRA and not any other Act. McQueen J correctly applied *Fehling* in this respect and the law in this area does not need clarification.

[15] In addition, Mr Dunn has not pleaded discrimination and there is no suggestion that he exercised or intended to exercise any rights under or by reference to the HRA. As McQueen J noted, Mr Dunn had a right of review or appeal in relation to his ACC entitlements and the claim to the Tribunal was a collateral attack on those decisions which is not permissible.<sup>21</sup>

---

<sup>20</sup> *Air New Zealand Ltd v McAlister* [2009] NZSC 78, [2010] 1 NZLR 153.

<sup>21</sup> See High Court decision, above n 2, at [59].

[16] Mr Dunn also impermissibly seeks to go beyond the scope of the appeal at hand, for instance by seeking clarification as to whether ACC claimants who suffer disability have human rights in an ACC claim.

[17] The threshold for leave for a second appeal under s 124(3) has not been met.

### **Result**

[18] The application for special leave to appeal is declined.

[19] The applicant must pay the respondent costs for a standard application on a band A basis, together with usual disbursements.

Solicitors:  
Accident Compensation Corporation, Wellington for Respondent