

Morena Mr Hartley

Further Submission to the Rules Committee on Improving Access to Civil Justice

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Background

Since 2006 I have experience in assisting injured people with their issues in respect of the Accident Compensation (ACC) scheme both as an appointed member of the ACC Consumers Outlook Group (COG) and the ACC Advocates and Representatives Group (ARG) and lately in an individual capacity.

The Accident Compensation Act 2001 is lengthy and complex.

The reforms to the District Courts Act and High Court Rules are very relevant because they have application in the ACC Act.

The Committee has my initial submission dated the 29th of April 2020.

Thank you for the opportunity to respond to the further consultation on proposed reforms.

The ACC legislation provides that the Corporation must in each financial year pay the Ministry of Justice such amount as they agree as being the reasonable administrative costs of appeals and the reasonable costs of appeals in relation to judicial salaries, fees, and allowances.

Clearly, adequate support from ACC ought to be available for all Judges and administration/registry staff for appeals to make the best possible use of processes.

The ACC scheme is globally unique. ACC publishes that it deals with 2 million claims each year. For people who are injured, life can be changed in an instant.

Proper application of statutory review and appeal processes against an adverse ACC decision is therefore crucial for physically and mentally injured people who, for whatever reason, are unrepresented..

Injured people with disabilities come from a wide diversity of backgrounds, education and occupations. Accessing justice can be an alienating experience at all levels.

It is therefore disappointing that mention of the Accident Compensation scheme was not included in the latest consultation document.

The fact is that following an unsuccessful application under the statutory review process, ACC claimants can then end up in appeal, firstly from the District Court, and then to the High Court and the Court of Appeal providing leave to appeal is granted to the senior courts but that is not guaranteed (for unrepresented people).

A first instance review and a reviewer is proscribed in the ACC legislation to adopt an informal investigative approach but in practice the review is being conducted as a formal adversarial hearing-only by reviewers where an unrepresented claimant is then confronted by a well resourced and experienced lawyer instructed by ACC.

In the context of reviewers using adversarial procedures at first instance the commentary of Hon Justice Helen Winkelmann (as she was then) in her 2014 Ethel Benjamin address is relevant to justice being seen to be done:-

".....There is also another aspect to the adversarial model which depends upon legal representation. It is the reliance that Judges place upon counsel to never knowingly mislead the Court in matter of fact or law. This duty of counsel enables the system to function efficiently and maintains its integrity. It frees the Judge from having to conduct his or her own inquiries to independently check the veracity of what they are told by counsel. For counsel this duty flows from the fact that counsel are officers of the Court....."

When raised, the Courts in the ACC jurisdiction hold that an appeal is a rehearing but the statute proscribes a rehearing of the "review decision". It does not proscribe a de novo rehearing of ACC's substantive decision as an adversarial contest but that is what is being allowed to happen by the Courts. This interpretation is contributing to significant costs and use of resources with justice not being seen to be done from a first instance review. A statutory "review" and a "hearing" ought not to be confused.

Moreover, a rehearing by a Court of some one hour duration, again up against ACC instructed counsel, is not an inquisitorial/investigative approach for an unrepresented injured person's claim. There is no equality of arms and, sometimes, people are left approaching the media.

In my experience the judiciary operating in the ACC jurisdiction are not giving effect to the will of Parliament as expressed in legislation. Cases can, and do, go off the rails with people going away feeling that justice is not being seen to be done.

I have read and agree with what other submitters have told the Committee.

In principle I agree with any proposed reforms to the current "justice system" but I would like to see the Rules Committee go further and align reforms with the Te Ao Marama model and vision currently being established by the Chief District Court Judge in the District Court.

The issues above need in-depth scrutiny by the Committee with which I can assist.

Kia ora rawa atu