Letter to Kevin Hague – New-Zealand MP

Dear Kevin,

I am an independent ACC law specialist representing claimants. It also happens that I am a former employee of DRSL. Together with Anne Scragg and Robert Finlay, I developed and implemented a mediation program between ACC and DRSL which was running between late 2005 to mid 2007. I then worked on further alternative Dispute Resolution process within a program called ARGO that I run for almost 2 years in the South Island before becoming an independent advocate.

I saw this morning your question to Honorable Nick Smith re: the professional origins of DRSL reviewers.

Few reviewers are former ACC employees and all of them have been with DRSL for many years having left any form of ACC culture behind them. From my experience as a former employee of DRSL and now an independent advocate, I can testify of their independence.

One in some occasion can raise the question of the quality of some decisions but this is an issue not specific to DRSL and that is found in any court system.

I suspect that your wider question is around fairness of the review process and accessibility.

DRSL has developed a very strong unique culture in Alternative Dispute Resolution which I believe has no other equivalent in NZ.

If the government ensures that all disputes are managed by the new independent crown entity that is DRSL like an alternative dispute resolution "court", then yes New-Zealanders have more chances to have fair decisions providing that the issue of access to representation is addressed.

Indeed you are aware that overall only 23 to 30% of ACC decisions are overturned at review. However when a claimant is represented by us for example, 93% of the decisions are overturned.

This highlight the complexity and the technicality of ACC law, the issues that have to be addressed by claimants at review and the necessity to seek representation.

Unfortunately very few claimants have access to professional specialist representation at review for the following reasons:

- Legal aid is accessible to only a limited category of claimants and very few specialists work with legal aid.
- The regulatory representation costs awards are ridiculously low (see attachment) leaving claimants having to pay their legal bills even when then win the review (which in our case 93% of the time). Many of ACC claimants do not have the means of paying even $300. Which often leaves representatives in the position of having to work on a pro-bono basis and losing money if we want to ensure that New-Zealanders have a fair access to review.

Often, unrepresented claimants lose their case, which although had some merit, simply because they did not have the knowledge to put forward the necessary legal arguments to the reviewer and are overwhelmed by ACC submissions (which for a specialist are half of the time totally useless).

A reviewer is bound by neutrality and therefore cannot go beyond the arguments put by the parties at review in order to make a decision. Should the reviewer present a new argument to support his or her decision then automatically there will be a real perception of bias and the decision will not stand if Acc was to appeal it.

I can assure you that many reviewers are often torn when they see the merit of the case but cannot justify a decision in favour of the claimant as the relevant arguments were not put forward at the hearing.

ACC has the knowledge power which is very difficult to address by an unrepresented claimant.

Obviously an adverse decision in such situation will be perceived by the claimant as being issued by a biased reviewer who could not see through the obvious. Only proper mediation and facilitation with mediator with high technical knowledge can address these issues.

Unfortunately ACC has become very reluctant to enter these processes and if entered it will often turn into a one sided argument as ACC now often adopts a very positional approach.

Despite yesterday's announcement by N. Smith about DRSL status, there is still a risk of many future reviews to be managed by potentiality judge and party reviewers in the context of the privatisation of the accounts.

If the private insurers have the opportunity to contract reviewers from generalist law firms with no prior experience on ACC law and get their training from ACC/private insurer then one should have serious concerns about the reviewers being judge and party. I here refer to the current trial taking place in Timaru since the past few months with a private law firm where the reviewer. What is the government intention in putting place such trial?

To really allow claimant to have access to a fair review process, I believe that:

1. There should be only one independent public body dealing with the reviews with trained mediators and ACC law specialists.
2. That real representation costs be awarded to claimants when a case is won like it is at the District Court level.

Yours Sincerely

Claire Parry-Canet
ACC law Specialist
LLB (France) and Mediator - AAMINZ