

**IN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**[2022] NZACC 194      ACR 277/21**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	MELINDA RHODES Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing:            27 September 2022  
Held at:            Auckland/Tāmaki Makaurau

Appearances:    B Hinchcliff for the Appellant  
                         F Becroft for the Accident Compensation Corporation

Judgment:        4 October 2022

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Claim for personal injury through a series of events other than a gradual  
process- s 25, Accident Compensation Act 2001]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 23 November 2021. The Reviewer dismissed an application for a review of the Corporation’s decision dated 2 August 2021 declining cover for Ms Rhodes’ left ischiofemoral ligament impingement.<sup>1</sup>

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<sup>1</sup> An ischiofemoral impingement occurs when there is contact between the top of the thighbone (the femur) and the hip bone (the ischium), causing damage to the bones and resultant pain.

## **Background**

[2] Ms Rhodes was born in November 1974. She worked as a self-employed personal trainer.

[3] In 2014 and June 2015, Ms Rhodes suffered two left hamstring injuries, for which she was granted cover.

[4] On 4 June 2015, Dr Richard Beedie, Radiologist, reported that an MRI scan of Ms Rhodes' left buttock and hamstring noted moderate left hamstring origin tendinosis with a small linear partial tear and mild left gluteal tendinosis.

[5] In June-July 2015, Ms Rhodes underwent treatment with Dr Paul Wharam, Sports Physician, who used autologous blood injections, and a 50% improvement in symptoms was noted.

[6] On 28 November 2016, Ms Rhodes suffered a further injury to her left hip when she slipped on a wet floor.

[7] On 15 February 2017, Dr Craig Panther, Sports and Exercise Physician, referred Ms Rhodes to Mr Brick, Orthopaedic Surgeon, noting that she had been struggling with a left-sided hamstring injury for nearly two years.

[8] On 10 April 2017, Mr Brick was of the view that Ms Rhodes had damaged her labrum in the fall in November 2016.

[9] On 16 May 2017, a subsequent MRI confirmed a torn anterosuperior labrum, a small osteochondral lesion in the posterosuperior femoral head with a subchondral cyst, and thinning of the overlying cartilage with mild cortical irregularity.

[10] A surgery request was made to the Corporation in regard to the labral injury. On 27 June 2017, the Corporation declined the request on the basis that the condition was an underlying one caused by the particular make-up of Ms Rhodes' hip. However, on 30 November 2017, the Corporation's decision declining cover and surgery funding was overturned at review.

[11] On 21 March 2018, Ms Rhodes underwent a left hip arthroscopy, conducted by Mr Brick. Post-surgical reports indicated that she was doing well, as indicated by a report of 24 March 2019 by Dr Tracey Giddings for Mr Brick.

[12] On 21 January 2020, an MRI was conducted on Ms Rhodes' left hip. Dr Penny Thomson, Radiologist, noted mild ischiofemoral impingement.

[13] On 12 March 2020, Dr Tracey Giddings, for Mr Brick, noted that Ms Rhodes had presented because things had deteriorated over the past twelve months and she described an ongoing ache in the left gluteal region.

[14] On 22 June 2020, an ACC injury claim form was filed by Mr Brick for left ischiofemoral impingement. The claim form provided an accident date of March 2019 and referred to Ms Rhodes having suffered gradual onset left buttock's pain. In a supporting letter, Mr Brick advised that an image-guided injection into the ischiofemoral space had removed Ms Rhodes' pain. Mr Brick stated:

This is a work related injury. It is a straightforward problem of being a weightlifter/personal trainer. Melinda pays tax on her personal training which requires her to be extremely fit and strong. To this end, I have recommended we apply as a gradual process injury for the repetitive impingement between her ischium and her lesser trochanter.

The next treatment step is to consider endoscopic resection of the tip of the lesser trochanter. We have talked about this today including pros and cons and likely recovery.

[15] The Corporation subsequently received an earlier letter from Mr Brick dated 11 March 2020. This letter noted that things had deteriorated for Ms Rhodes over the past 12 months, and that she had been having an ongoing slight left gluteal niggle when performing a single leg glute bridge. The letter further stated:

Later in 2019 she took part in the quarter marathon, but 2 months prior developed some upper spine pain, in association with ongoing gluteal discomfort. She was seen by a physiotherapist for the back and as the back gradually resolved the hip flared up. She now describes an ongoing ache in the left gluteal region. She avoids lying on the left side in bed, as waking following this causes more discomfort. Her rehab has been based around ongoing abductor strengthening as well as gluteal work with bands, bridges and monster walk. She also performs some regular balance work. She avoids pain relief where possible but has found ibuprofen helpful when needed. She has had one

occasion of pain down the left leg when picking up something but this settled quickly.

[16] On 21 July 2020, Dr Rod Nicholson, Occupational Medicine Specialist, reported, after interviewing Ms Rhodes. Dr Nicholson noted that Ms Rhodes had advised that her pain was a bit different than prior to the surgery, now being deeper and present in both the inner and outer thigh. Dr Nicholson stated:

She feels confident that the labral tear has healed. She states that following surgery, she had a good year with minimal symptoms. She had approximately 3 months off work and then gradually reintroduced classes, so that by 1 year she was back doing her normal work. She states that the pain subsequently built in approximately at the 1 year mark. She now experiences an aggravation of the pain doing squats, deadlifts, sitting on hard surfaces, lying in bed, jogging more than 30 minutes, impact with step classes

[17] Dr Nicholson noted that left hip/groin pain can be a difficult symptom to accurately diagnose with numerous potential pathologies contributing to the pain. He noted, in Ms Rhodes' case, that this might include the tendinopathy of the hamstring as well as the labral tear, as well as the diagnosis of the ischiofemoral impingement. Dr Nicholson was asked whether there were any employment properties or characteristics that caused or contributed to Ms Rhodes' condition. He said that this was uncertain, but probably not. He was not certain what the causal factors in Ms Rhodes' case were. He noted, though, that she had not had any significant trauma or any significant surgical procedure. He acknowledged her work as a gym instructor, but said that this work had not been documented in the medical literature as having an increased risk factor. He noted that gender and congenital development were potential risk factors. He did not think that the significantly greater risk test was satisfied. Dr Nicholson concluded:

My overall opinion is that it appears that there does not appear to any objective evidence that her work has caused her condition of ischiofemoral impingement syndrome. It may be that her work is aggravating an underlying predisposition to this condition.

[18] On 21 August 2020, Ms Rhodes' claim for a work-related gradual process injury was declined. This decision was made on the basis that the information provided indicated that her work environment did not cause her condition and/or her work environment did not put her at significantly greater risk of developing her medical condition.

[19] On 8 November 2020, she applied for a review of that decision.

[20] On 19 January 2021, Ms Launa Steel, Clinical Advisor and Physiotherapist, provided a comment for the Corporation. She stated:

The client's current diagnosis is ischiofemoral impingement, that is impingement of the sciatic nerve and quadratus femoris muscle between the lesser trochanter of the femur and the ischium. As per Occupational Medicine Physician, Dr Nicholson's report of 21/7/2020, ischiofemoral impingement is caused by congenital conditions or subsequently acquired conditions which reduce that ischiofemoral distance. The space between the ischium and the lesser trochanter is further reduced with hip extension, external rotation and adduction.

The resection of the pincer morphology does not alter hip extension/external rotation or adduction range of movement. As such, the client's ischiofemoral impingement cannot be attributed to the acetabular rim resection of 21/3/2018. In any case the resection of the acetabular rim aspect of the 21/3/2018 surgery was to address a non-injury related condition (pincer morphology).

In summary, the client's ischiofemoral impingement syndrome is not a consequence of the labral repair surgery to address the covered labral tear, nor the pincer morphology resection portion of the surgery, which was to address non-injury related pathology.

Please note, I have discussed this case with ACC Orthopaedic Principal Clinical Advisor, Ray Fong

[21] On 13 February 2021, Dr Nicholson provided a further report for the review, and confirmed his view that Ms Rhodes' condition was not caused by her work.

Dr Nicholson observed:

I note that the distance between the lower trochanter and ischium is approximately 20 mm. Risk factors can include an enlarged lesser trochanter. This may be developmental, but can also occur following trauma. Any abnormal shape can be present since birth. Abnormal shape can develop over time more frequently seen in young athletes who participate in sports involving twisting of the hip and squatting.

In addition, it was noted that the diagnosis was made more recently by Dr Brick in March 2020 following an MRI scan and also improvement of his pain following a cortisone steroid and anaesthetic injection. ...

Whether personal trainers are at increased risk is not supported by the literature, but as [Ms Rhodes] suggests there have not been any studies noted. Based on information available it is not possible to link gym instructors with having increased risk of IFI [ischiofemoral impingement] currently.

[22] On 2 March 2021, Mr Brick provided a report in support of Ms Rhodes' work-related gradual process claim. He acknowledged that the main pre-existing risk factor for ischiofemoral impingement was being female. He also acknowledged that there was no scientific evidence to support the claim, but said that this was simply because there is very little research into ischiofemoral impingement. He said that Ms Rhodes' work involved regular movements all day long, particularly extension, adduction and external rotation, all dynamically narrowing the ischiofemoral space. He also thought that the pincer resection might have contributed to her condition. He stated that sometimes, when the literature cannot assist, it has to come back to common sense:

We have no pre-existing conditions such as pelvic trauma or alteration of the proximal femoral morphology to explain her condition in terms of a pre-existing condition. As mentioned her main risk factor is being female. We know that her quadratus femoris muscle is being repeatedly crushed which is causing buttocks pain and clear evidence of oedema on the MRI scan. If we ask ourselves the question why is this happening the simple answer is Melinda's activity. If we then ask ourselves is there anything unusual about Melinda's activity the answer is yes. As part of her employment she must make vigorous movements repeatedly on a daily basis. We have established that many of these movements will dynamically narrow her ischiofemoral impingement. I am sure that Dr Rod Nicholson would agree that it would considerably less likely that Melinda would suffer from ischiofemoral impingement if she had a sedentary office job. With the application of common sense, I think we can all agree that it is more likely than not that Melinda's job as a personal trainer is contributing significantly to her ischiofemoral impingement. I am sure that Dr Rod Nicholson would agree that it would be considerably less likely that Melinda would suffer from ischiofemoral impingement if she had a sedentary office job.

With the application of common sense, I think we can all agree that it is more likely than not that Melinda's job as a Personal Trainer is contributing significantly to her ischiofemoral impingement.

[23] On 20 May 2021, the Reviewer issued a decision recording the following agreement:

- 1) Ms Rhodes withdraws her application for review, conditional on points 2-4 below.
- 2) Ms Rhodes will provide ACC with a statement of evidence in respect of her claim, and any other evidentiary matters she wishes to address.
- 3) ACC will reinvestigate the claim as a personal injury caused by an accident, with specific reference to causation through a series of events (but not limited thereto), taking into account Ms Rhodes' statement and evidence; and
- 4) ACC will then issue a new decision on the topic, with fresh review rights.

[24] On 1 June 2021, Ms Rhodes noted that, when she extended and rotated her hip joint by lifting her leg back and inward behind her in standing and against gravity, she had pain in her hip, and exercises gave her pain in the gluteal region. She added that her hip region was weaker and not as stable as before her surgery.

[25] On 15 June 2021, Mr Brick wrote a further letter of support advising:

I am aware that this could also be considered as a series of events rather than a single event. Previous ACC law has suggested that if events are so gradually incremental that they cannot be distinguished from one another, they should be regarded as a gradual process. Whereas a series of forceful events, each contributing in some significant way would attract cover. Another ruling suggested that the event would generally be apparent and there would normally be knowledge of how and when the event took place.

This would certainly be the case with Melinda's job. The injured structure is quadratus femoris. It is crushed between the ischium and the lesser trochanter. This repetitive process would not be seen in everyday life or in a sedentary person. Melinda's job involves regular movement such as deep squatting or lunging which would dynamically narrow the ischiofemoral interval, sequentially damaging the quadratus femoris muscle.

I would be grateful if the Clinical Advisory Panel could reconsider this claim as a sequence of events injury.

[26] On 27 July 2021, Ms Steel advised:

The current condition, ischiofemoral impingement, is a longstanding gradual process condition, which has developed over a significant period of time. This is supported by the treating orthopaedic surgeon and the assessing occupational medicine physician. As I understand it, this is not due to a "series of events", but a gradual process condition.

[27] On 28 July 2021, Mr Nick Eaden, Technical Specialist, advised that he could not see how cover for personal injury caused by accident (series of events in this case) could be accepted. Mr Eaden noted that there was no well-defined series of events outlined, and that the evidence supported the condition developed as a result of a gradual process.

[28] On 2 August 2021, the Corporation declined Ms Rhodes' claim on the basis that the weight of evidence showed that the condition was a long-standing gradual-onset one which had developed over a significant period of time, as opposed to being an injury due to a series of events. On 9 August 2021 a review application was filed against that decision.

[29] On 2 November 2021, review proceedings were held. On 23 November 2021, the Reviewer dismissed the review on the basis that the ischiofemoral impingement and compression of the quadratus femoris muscle was not caused by a series of events, and was more likely as a result of a gradual process.

### **Relevant law**

[30] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that “personal injury” does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that “accident” means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[31] In *Milne*,<sup>2</sup> the appellant claimed cover for a low back sprain probably caused by heavy lifting of tools and equipment while working on oil rigs, but he could not recall a specific event. Judge Cadenhead found that there had not been a series of events and dismissed the appeal. His Honour considered that:

... the words “series of events” connote that events have an interdependence that would be substantially causative of the injury.

[32] In *Miller-Helu*,<sup>3</sup> the appellant, in the period 20-22 February 2022 while at work, developed symptoms leading to admittance to hospital with a rash and swollen tongue. Judge Ongley stated:

[40] I find the evidence in this case suggests strongly that there was an exposure or a short series of exposures resulting in an allergic reaction. There is no evidence of the origin of the appellant's sensitisation which may or may not have been work related. As a matter of fact and degree, I find that the process, which is not shown to have occurred over more than a few days, was not a gradual process within the meaning of the two statutes concerned here.

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<sup>2</sup> *Milne v Accident Compensation Corporation* [2004] NZACC 221, at [23].

<sup>3</sup> *Miller-Helu v Accident Compensation Corporation* [2005] NZACC 30.



[33] In *Waghorn*,<sup>4</sup> the appellant was a fast bowler at cricket who suffered repetitive stress, culminating in a jarred knee and sharp lower back pain while playing on a particular date, resulting in a stress fracture of the bones of the lower spine. Judge Ongley found that the appellant probably suffered a significant degree of stress fracture when he fell, and allowed the appeal. His Honour stated:

[33] ... In aid of interpretation, it is noted that subs (a) refers to “a series of events, other than a gradual process”. It is implicit in the text that a “series of events” may be a series of specific events or a gradual process. There is no guidance as to the dividing line. Continuous processes such as wear on a joint would not be called a series of events. A logical approach to the problem, at least in the case of a pars defect, is that if the events are so gradually incremental that they cannot be distinguished one from the other, they should be regarded as a gradual process. Whereas a series of forceful events, each contributing in some significant way, would attract cover. That does not solve the evidential difficulty. A process, as in the present case, could involve a combination of both causes, that is to say a process of indistinguishable minor events as well as more significant stresses capable of causing a fracture.

[34] In *Bouterey*,<sup>5</sup> the appellant took up running between five and 10 kilometres twice a day, and on a particular date while running he experienced pain in his low back, and two days later when running again the pain became more serious. The appellant was diagnosed with a stress fracture. Judge Beattie dismissed the appeal and stated:

[14] The requirement for cover is that there is an accident event, or a series of accident events, which have caused the personal injury, and I consider that that wording requires that the series of events are all attributing to the physical injury that is subsequently identified. A gradual process, on the other hand, is where the events individually are not causing any physical injury, but are setting up a state of affairs which will ultimately result in the onset of a physical injury. ...

[18] It is the case that there is no evidence to suggest that any particular action of the appellant during the substantial amount of running he was undertaking caused the onset of any physical condition. Indeed, Mr Oakley has identified that it was the fact of the repeated stress which the appellant was causing to the bone in issue which ultimately caused the onset of what is described as a stress fracture. In those circumstances, I find that the statutory provision of a series of events cannot apply, and that the injury condition has arisen as a result of a gradual process over a period of months during the appellant’s running activity.

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<sup>4</sup> *Waghorn v Accident Compensation Corporation* [2013] NZACC 2.

<sup>5</sup> *Bouterey v Accident Compensation Corporation* [2013] NZACC 123.

[35] In *Hodgson*,<sup>6</sup> the appellant had been in the practice of running approximately 20-25 kilometres per week, and on a particular date suffered a sudden onset of pain in her left hip. Judge Middleton allowed the appeal and stated:

I consider that the action of running did cause the appellant to suffer a jar to her hip which resulted in the soft tissue injury diagnosed by Mr Burn and Professor Bury.

[36] In *Chaplow*,<sup>7</sup> the appellant had undertaken a gym programme, and on a particular date while running on a treadmill she felt a tearing pain in her feet. Judge Ongley allowed the appeal and stated:

There is a credible case that the appellant's injury was caused by a series of events when she increased her activity in October 2003 and when her feet were put under some unaccustomed stress when working on a treadmill. There is also a credible case for a conclusion that the injury had already occurred by gradual process and the increase in exercise activated symptoms.

[37] In *Calver*,<sup>8</sup> the appellant's mesothelioma (which resulted in her death) was caused by asbestos inhalation when (between the ages of four and 10) she hugged her father in his work overalls or played at a building site. Justice Mallon allowed the appeal and stated:

[102] The addition in s 25(1)(a) of "a series of events, other than a gradual process" reflects the common law that there can be a series of accidents (events of force) that cause an injury which, although occurring more than once, are not a gradual process. An example has arisen in the context of cricket. In *Barrett v Accident Compensation Corporation* a semi-professional cricketer, a fast bowler, sought cover for surgery for a fracture. The cricketer contended there had been a particular instance when he felt low back pain while bowling and had to leave the field. ACC declined cover saying his fracture was from repetitive microtraumas and this was a gradual process. The Court held, on the balance of probabilities, the injury was the direct result of the bowling incident referred to by the cricketer. There had either been a series of individual stresses and a significant event that completed the fracture, or the significant event had initiated the fracture. ...

[104] Mesothelioma develops because a person has inhaled asbestos fibres of a quantity that, for that particular person, is a sufficient dose to trigger (at a later date) the disease. In my view, in this kind of case, the "specific occasion" is the occasion that gives rise to the sufficient dose. That may be a single occasion (in which case there has been a "specific occasion" at this time). Or the sufficient dose may arise from several occasions (in which case the occasion on which the last bit of asbestos is inhaled that constitutes the necessary dosage is the

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<sup>6</sup> *Hodgson v Accident Compensation Corporation* [2013] NZACC 123

<sup>7</sup> *Chaplow v Accident Compensation Corporation* [2006] NZHC 226.

<sup>8</sup> *Calver v Accident Compensation Corporation* [2019] NZHC 1581.

“specific occasion”). As Dr Glass put it, where there are multiple exposures, any one can be seen as causative and which one is not material. There will, in the end, be an occasion that is causative. ...

[106] ... On a purposive approach “a specific occasion” is intended to distinguish between injuries that are caused by a triggering external, non-continuous event and those that are caused only because of repetitive or continuous inhalation over time.

[38] In *Taylor v Roper & Attorney General*,<sup>9</sup> the appellant commenced a civil action claiming sexual assault and falsely imprisonment causing mental injury.

Justice Brown J stated, in the judgment of the Court of Appeal:

[40] “Gradual process” is not a defined term. It appears in several provisions as part of the composite phrase “gradual process, disease or infection”. Cover is available under s 20(2)(e) for personal injury caused by a work-related gradual process, disease or infection, that being one of the exceptions to the general exclusion in s 26(2) of personal injuries caused wholly or substantially by a gradual process, disease or infection. Its relevance here is that s 21B, which gives cover for work-related mental injuries caused by a “single event”, expressly excludes a gradual process from the definition of event. This definition of “event” in s 21B(7) finds a parallel in the first definition of “accident” in s 25(1)(a) which refers to “a specific event or a series of events, other than a gradual process”.

[41] This limitation in respect of cover for work-related mental injury reflects a policy decision that can be gleaned from the legislative history. The explanatory note to the Bill, quoted at [30] above, stated that the Bill introduced cover for mental injury caused by exposure to a sudden traumatic events at work but not for mental injury caused by “non-physical stress (gradual onset) in the workplace”.

[42] As the submissions for the Attorney-General noted, the Transport and Industrial Relations Committee accepted that mental injury caused by a series of events ought also to be covered. But it considered that extending the proposed cover to “include mental injuries arising from gradual or cumulative exposure to work tasks or the characteristics of a particular job would have significant policy and financial implications”. The Committee confirmed the intention of the requirement that the event be one that could be reasonably be expected to cause mental injury is “to ensure that cover for work-related mental injury does not extend to injuries caused by minor events or by gradual process”.

[43] Mr Little’s submission for Ms Taylor appears to assume that, although there were a number of individual instances of conduct amounting to false imprisonment over a significant period of time, because those incidents constituted a continuous course of conduct they qualified as a gradual process for the purposes of s 21B(7). We do not agree. The concept is not merely about something happening repeatedly. There is the requirement of some type of process taking place. Moreover, the legislative history highlights injuries that may occur from “gradual or cumulative exposure”, which suggests

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<sup>9</sup> *Taylor v Roper & Attorney General* [2021] NZCA 691.

progressive development over days, weeks or months. Putting this together, in our view the reference to a “gradual process” is a reference to a transformative process occurring progressively over time.

[39] In *Ambros*,<sup>10</sup> the Court of Appeal made the following comments on evidence as to causation:

[65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense ...

[67] The different methodology used under the legal method means that a court’s assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture ... Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence ...

## Discussion

[40] The issue in this case is whether there is sufficient evidence that Ms Rhodes’ condition is a personal injury by accident, specifically, a personal injury caused by a *series of events* (attracting cover) as opposed to a *gradual process* (not covered). Section 25(1)(a) of the Act provides that “accident” means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. A “series of events” is a sequence of forceful events, each contributing to the injury in some significant way, as opposed to events which are so gradually incremental that they cannot be distinguished one from the other.<sup>11</sup> The series of events must all attribute to the physical injury that is subsequently identified, as opposed to a gradual process, where the events individually do not cause any physical injury, but set up a state of

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<sup>10</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

<sup>11</sup> *Waghorn*, cited above.

affairs which ultimately result in the onset of a physical injury.<sup>12</sup> For there to be a series of events, there might be a series of individual stresses and a significant event that completed the injury.<sup>13</sup> On the other hand, a gradual process refers to a transformative process occurring progressively over time.<sup>14</sup>

[41] In March 2018, Ms Rhodes underwent a left hip arthroscopy, conducted by Mr Brick, Orthopaedic Surgeon. In June 2020, Mr Brick filed an ACC injury claim form for left ischiofemoral impingement, and referred to Ms Rhodes having suffered gradual onset left buttock's pain with an accident date of March 2019.

[42] Mr Hinchcliff, for Ms Rhodes, submits as follows. There is no evidence that Ms Rhodes' injury was wholly or substantially due to a pre-existing gradual process condition rendered symptomatic. Ms Rhodes' covered surgery in March 2018 involved structural changes to her hip joint that increased its range of motion. Because the hip surgery allowed for increased range of motion, certain end of range hip movements compressed the quadratus femoris muscle causing injury to it. Repeated twisting of Ms Rhodes' hip, against gravity, caused damage to her quadratus femoris with each event, and the cumulative effect was a coverable injury.

[43] This Court acknowledges the above submissions. However, the Court refers to the following evidence which indicates that Ms Rhodes' condition was caused, not by a series of forceful events, each contributing to the injury in some significant way, but by a gradual, incremental, transformative process occurring progressively over time:

- (a) Dr Tracey Giddings, for Mr Brick, noted that Ms Rhodes had presented because things had deteriorated over the previous twelve months (prior to March 2020) and she described an ongoing ache in the left gluteal region.
- (b) The ACC injury claim form filed by Mr Brick, Orthopaedic Surgeon, for left ischiofemoral impingement referred to Ms Rhodes having

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<sup>12</sup> *Bouterey*, cited above.

<sup>13</sup> *Calver*, cited above.

<sup>14</sup> *Taylor*, cited above.

suffered gradual onset left buttock's pain, being a gradual process injury for the repetitive impingement between her ischium and her lesser trochanter. Mr Brick attributed Ms Rhodes' condition to her job, which involved regular movement such as deep squatting or lunging which would dynamically narrow the ischiofemoral interval, sequentially damaging the quadratus femoris muscle.

- (c) The evidence of Ms Rhodes is that she has had an ongoing ache in the left gluteal region, had one occasion of pain down the left leg when picking up something but this settled quickly, the pain subsequently built in approximately at the one-year mark, and she now experiences an aggravation of the pain doing various activities.
- (d) Dr Rod Nicholson, Occupational Medicine Specialist, reported, after interviewing Ms Rhodes, that she had not had any significant trauma or any significant surgical procedure, and it might be that her work was aggravating an underlying predisposition to her condition.
- (e) Ms Launa Steel, Clinical Advisor and Physiotherapist, advised that Ms Rhodes' condition was a longstanding gradual process condition, which had developed over a significant period of time, rather than being due to a series of events.
- (f) Mr Nick Eaden, Technical Specialist, noted that there was no well-defined series of events outlined, and that the evidence supported the condition developed as a result of a gradual process.

## **Conclusion**

[44] This Court finds that there is not sufficient evidence that Ms Rhodes' condition is a personal injury by accident, specifically, a personal injury caused by a series of events as opposed to a gradual process. The decision of the Reviewer dated 23 November 2021 is therefore upheld. This appeal is dismissed.

[45] I make no order as to costs.

A handwritten signature in black ink, appearing to read "P R Spiller". The signature is written in a cursive style with a large initial "P" and "R".

P R Spiller  
District Court Judge

Solicitors for the Respondent: MedicoLaw.