

**PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001
THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF
THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY
THE APPELLANT**

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 008 ACR 037/20

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

Hearing: 22 November 2021

Heard at: Auckland/Tamaki Makaurau

Appearances: B Hinchcliff for the appellant
 F Becroft for the respondent

Judgment: 20 January 2022

**RESERVED JUDGMENT OF JUDGE DENESE HENARE
[Cover issues; Suspension of entitlements; s 117 and Part 3
Accident Compensation Act 2001]**

- [1] At issue in this appeal are two decisions of the Corporation dated:
- [i] 28 June 2019, declining cover for a labral tear; and
 - [ii] 15 August 2019, suspending entitlements on Ms N's February 2019 claim.

[2] Ms N also raises the issue of a possible deemed review in relation to a third review application dated 29 August 2019 that, in her submission, was not sent to review within the legislative timeframe.

[3] Counsel filed an agreed statement of facts which the Court expands, having regard to the available evidence, including Ms N's evidence at review.

Background

[4] On or about 13 January 2019, Ms N was walking on a footpath at Hobsonville Point. She sat down on a bench that had no back or sides. When she got off the bench, she fell onto another walkway and landed on her right hip. The height of the bench was approximately 1 to 1.5 metres from the ground. She felt pain in her right hip and could not get up without the help of a co-worker who assisted her to the car.

[5] Ms N did not seek medical attention immediately. She thought she had suffered a sprain or contusion and that it would heal.

[6] Subsequently, on 20 February 2019, Ms N's husband was washing a floor at their home. Ms N slipped and fell on the wet part of the floor, falling onto her right hip, which caused her to suffer pain. She did not seek immediate medical attention.

[7] On 7 March 2019, she consulted Dr Caldwell, GP, who lodged a claim for cover for contusion hip and thigh - right side. He recorded the 20 February accident but did not mention the 13 January accident. He described the accident:

slipped on floor and fell***Household or garden chore***slipped / tripped / fell

[8] The Corporation granted cover for the contusion injury on 7 March 2019.

[9] On 8 March 2019, Dr Sim, Radiologist, took an x-ray of the pelvis and right hip. He found no femoral fracture or bone lesion:

No pelvic or proximal femoral fracture is identified. Joint space is satisfactory with the hip joints. Sacroiliac joints are normal. No focal bone lesion seen in the pelvis or proximal femora.

[10] On 4 April 2019, Dr Lyons, Radiologist, reported an ultrasound finding "irregularity of the lateral acetabular labrum with an adjacent small fluid collection". He noted a "possible acetabular labrum injury" and that an "MRI might be of use in this situation".

[11] On 5 April 2019, Dr Stirling, GP, filed a medical certificate, certifying Ms N as unfit for work from 5 April 2019 onwards as she was "unable to walk short distances due to pain". The date of injury was stated as 20 February 2019.

[12] On 17 April 2019, Dr Ghuman, Radiologist, took an MRI of the right hip which showed:

Intrasubstance labral tearing involves the anterosuperior labrum and small paralabral cysts extend anteriorly and posteriorly from the labral tear measuring 0.7 cm x 0.2 cm and 0.6 x 0.3 cm respectively. ... Wide field-of-view imaging reveals a probable inferiorly directed paralabral cyst at the left hip, raising suspicion for left-sided labral tear also, although dedicated left hip imaging has not been performed.

[13] On 18 April 2019, the Corporation wrote to Ms N indicating it was investigating her claim for weekly compensation and payments would commence in the meantime.

[14] On 24 April 2019, Mr Brownlee, Orthopaedic Surgeon, wrote to Dr Caldwell that Ms N:

... had an MRI scan of her right hip, which has shown an acetabular labral tear. There was no evidence of hip arthritis, or bony femoroacetabular impingement. [The appellant] is substantially disabled by pain and needs prompt arthroscopic surgical treatment. ... I have referred her on to my colleague, Haemish Crawford, for consideration of this. If Haemish is unable to see [the appellant] promptly, she may alternatively wish to see Mr Matt Brick, and advise us accordingly.

[15] On 26 April 2019, Dr Stirling, filed a claim for cover for an acetabular labrum tear relating to the 20 February 2019 accident.

[16] On 19 June 2019, Mr Crawford reported that:

Diagnosis - labral tear right hip which is probably causing her pain.

Treatment Plan - I am going to get a cortisone and local anaesthetic injection into the hip joint and then examine her immediately after this to confirm that the pain is intra articular. I think then she may well need to proceed with a hip arthroscopy and labral repair.

History – [The appellant] had a bad fall at Hobson Point when she fell off a walkway and onto another one. She landed on her right hip. She had pain in the buttock and the groin following this and this got a lot worse at the end of January when she went walking with her grandchildren and got sudden, severe, deep groin pain and could hardly walk following this. She has subsequently had to use crutches since then. She describes very clearly a C type pain deep in the groin. This is fairly classical of labral pathology or joint pathology. She feels it is very deep and it grinds in the hip. She has never had a problem with it before.

[The appellant] works in the disability sector as a care giver. She is unable to work at present.

[17] On 28 June 2019, the file was reviewed by Ms Reid, Clinical Advisor who commented:

There is sufficient medical information to establish a temporal and causal link between the accident event and the approved cover for the RIGHT hip and thigh contusion.

...

The labrum refers to a ring of cartilage that surrounds the acetabulum (hip socket). A tear to the labrum is not an indicator of causation with such findings being known to be present in the asymptomatic population and in the absence of any known trauma. Such changes are known to arise within the hip as a consequence of repetitive micro trauma and irritation such as would occur with long distance running on a background of suboptimal biomechanics and femoroacetabular impingement. The recurring hip flexion and impingement leads to tetragonal tears of the labrum and chondral loss to the hip joint. Whilst these changes may occur as a consequence of a significant trauma such as a dislocation / subluxation of the hip; there is no evidence of such an injury having been sustained on this claim.

Of note, the client lodged the claim within a couple of days of the accident event however no incapacity was issued for a further 6 weeks. If the client has sustained a labral tear at the time of the accident event, it would have been evident at the initial presentation and the functional impairment would not progress over time but rather be constant or be repairing itself.

Furthermore, the injury would not have caused bilateral labral tears. This is further evidence that the tears seen on the (17/04/2019) MRI are more representative of underlying degenerative changes.

[18] On 28 June 2019, the Corporation declined cover for an acetabular labrum tear. Based on the medical information, the decision noted Ms N had bilateral labral tears

more consistent with underlying degenerative changes than trauma. The decision confirmed cover for the "Right hip and thigh contusion".

[19] On 3 July 2019, Dr Stirling reported there was some confusion relating to the accident dates. She wrote:

Here to follow up on ACC paperwork. Apparently issues with dates on ACC paperwork. [The appellant] states original injury happened on 13th January 2019 when she fell off a walkway at Hobsonville Point onto a walkway below. ACC paperwork completed to communicate this. Wondering if a referral to the public system may be necessary. Advised to discuss this with orthopaedics and will do so if this is required. [The appellant] requested paperwork sent to ACC and Haemish Crawford ortho.

[20] On the same day, Dr Stirling filed a claim for an "acetabular labrum tear". The date of the accident was stated as 13 January 2019. The description on the claim form provides:

Writing to provide correction regarding right hip injury. Original injury happened on 13 Jan 2019 when fell off raised walkway at Hobsonville Point onto walkway below. Twisted hip in the fall.***Leisure/hobby or play***Slipped / tripped / fell

[21] On 26 July 2019, the Corporation granted cover for the labral tear.

Thank you for your patience while we considered your claim relating to your right hip in the accident of 13/01/2019.

- Acetabular labrum tear - Side: Right

The law gives ACC a limited period of time in which to assess claims for cover. Unfortunately ACC have gone over the legislative timeframe to issue a decision on your claim and this means your claim must be accepted for cover.

Although ACC have accepted your claim for cover, the investigation into your claim will continue. If after our investigation this decision needs to change, we will notify you as soon as possible.

[Emphasis added]

[22] On 7 August 2019, Ms N received a right hip steroid injection.

[23] On 12 August 2019, Ms Johnson-Chung, Clinical Advisor, reviewed the file:

The clinical advice dated 28/6/2019 now needs to be further interpreted in light of the new accident date, together with the appearance of a larger-force injury mechanism. Nevertheless, much of the reasoning then (28/6/2019) still applies:

- "A tear to the labrum is not an indicator of causation with such findings being known to be present in the asymptomatic population and in the absence of known trauma."
- "If the client has sustained a labral tear at the time of the accident event, it would have been evident at the initial presentation ..."
- "Furthermore, the injury would not have caused bilateral labral tears. This is further evidence that the tears seen on the 17/04/2019 MRI are more representative of underlying degenerative changes."

The new information provides some evidence in favour of causation of an Acetabular labrum tear:

- A fall from a height might be an appropriate mechanism
- There is evidence of previous similar pain but it appears to have been short in duration and associated with a fall, for which treatment commenced immediately. That is, the previous injury did not reveal, at that time, an underlying problem.

Also I note that investigation (by way of hip x-rays) commenced immediately with treatment.

The new information also provides some evidence against causation of an Acetabular labrum tear:

- Working from the accident dated 13/1/2019, then [the appellant] first sought treatment after a significant delay (7 weeks), and there is no explanation for this. (Also, a contusion would have resolved over this period of time.)

Also I note that:

- The reported X-ray findings did not specifically indicate the presence of normal Right hip morphology.
- The MRI findings on 17/4/2019 (3 months after the fall) of "small paralabral cysts" would be more in keeping with a longer-standing injury.

Altogether, the evidence against is more reliable than the evidence in favour.

...

The orthopaedic specialists have diagnosed a Right Hip labral tear. This is, still, not established as having been caused by the accident dated 20/2/2019. Moreover, it is not established as having been caused by the accident dated 13/1/2019.

The contusion sustained on 20/2/2019 resolved and the available clinical findings do not establish a contusion sustained on 13/1/2019. This also means that there is insufficient evidence to prove a physical injury dated 13/1/2019.

[24] On 14 August 2019, Mr Mercer, Technical Specialist, reviewed the active claims and suggested actions:

As per my comments under Supporting Analysis:

1. ACC needs to revoke the decision dated 26 July 2019 which acknowledged deemed cover for a right hip labral tear under claim ...78 because ACC had already, on 28 April 2019, acknowledged that it was considering cover for that injury and that it had until 26 August 2019 to make a decision and therefore there is no basis for a deemed decision.

ACC should then replace that decision with advice that claim ...78 is considered to be a duplicate of claim ...67 and a decision with respect to cover for a right hip labral tear will be made under that claim.

2. ACC should amend the date of injury under claim ...67 to reflect 13 January 2019 and advise the client of that.
3. ACC should advise the client that claim ...05 is considered to be a duplicate claim of claim ...67 and a decision with respect to cover for a right hip labral tear will be made under that claim.
4. ACC should decline cover for a right hip labral tear under ...67 as it is not accepted that it was caused by the described slip and fall accident on 13 January 2019.
5. Entitlement to weekly compensation must continue at present under claim ...67 because ACC has not yet shown, to a sufficient degree, that the client is no longer incapacitated due to her covered right hip and thigh contusion injury.

That said, ACC should clarify with Dr V Stirling, the certifying provider, whether the client does still have incapacity due to a right hip and thigh contusion injury suffered on 13 January 2019.

If the doctor does consider there is still incapacity due to a 7-month old contusion injury, they will need to explain the basis for such a conclusion as well as identify the symptoms and signs on examination which can be attributed to a contusion injury as distinct from the now diagnosed labral tear injury.

If the doctor confirms that the client is no longer incapacitated by her covered contusion injury, then ACC would be able to suspend entitlements given that incapacity will not be due to a covered injury.

Supporting Analysis:

COVER

...

Claim ...67

This claim relates to an accident the client is said to have suffered on 20 February 2019 when she slipped and fell. ACC has accepted that this accident caused a right hip and thigh contusion.

Claim ...05

This claim relates to the same accident already considered under claim ...67.

As such the new ACC45 Injury Claim Form only represents a request for additional cover for a right hip labral tear which should be considered under claim ...67 noting that ACC has advised that it has until 26 August 2019 to make such a decision.

It is noted that based on the current investigations cover for this right hip labral tear should be declined as it is not accepted that it was caused by the described slip and fall accident on 20 February 2019.

This claim, ...05, should then be considered a duplicate.

Claim ...78

This claim would appear to have been lodged so as to correct the date of accident reflected under claim ...67 while the proposed injury, a right hip labral tear, was already being considered for cover, albeit under claim ...05 instead of claim ...67, with ACC having until 26 August 2019 to make such a decision.

Given this, then there can be no issue of deemed cover under this claim such that ACC acknowledged on 26 July 2019 and indeed once the date of accident is up-dated on claim ...67, then this claim, ...78, can also be considered a duplicate.

With respect to cover for the right hip labral tear, the change in date of accident would not affect ACC's conclusions as expressed above but obviously in relation to the new date of accident.

[25] On 15 August 2019, the Corporation declined Ms N's claim referring to claim ...78:

ACC has looked carefully at all the information now available, and has decided that this claim should not have been accepted. This is because we have received new information concerning your injury and the information supports that the Acetabular labrum tear was not caused by an accident.

As a result, ACC has had to revoke the decision of 26/07/2019 and has declined your claim for cover. This means that ACC is not able to help with treatment costs or other support for your injury from 29/08/2019.

[26] On the same date, the Corporation suspended entitlements:

After carefully assessing all the medical information available, we're unable to continue with your entitlement. We've now suspended your entitlement to ongoing treatment costs and weekly compensation and you'll receive your last payment on 29/08/2019.

We're unable to continue providing you with this support as this medical information shows that your current condition is no longer the result of your personal injury of 20/02/2019. The medical information supports your hip contusion has reasonably healed and your time off work is due to an Acetabular labrum tear that has not been caused by your accident.

[27] On 19 August 2019, Mr Crawford referred Ms N to Mr Barnes, Orthopaedic Surgeon, for review of her lumbar spine. In his referral letter, Mr Crawford commented:

A cortisone injection into her right hip joint did not relieve her pain at all and I have subsequently done a MRI scan of her lumbar spine which shows a small right sided disc protrusion which is contacting the S1 nerve root on the right and I think this is what is probably giving her her right leg pain which goes down to her calf.

[28] On 29 August 2019, Ms N lodged 3 review applications. The first application was for review of the 28 June 2019 decision declining the claim for the labral tear injury. The second application was for review of the 15 August 2019 suspension of entitlements. The third application was for review of the 15 August 2019 suspension of entitlements but raising an issue regarding the necessary notice period for suspending entitlements. The file number referred to on all three review applications is: ...67.

[29] On 22 December 2019, Ms Noventa, Physiotherapist, prepared a report for Ms N:

Hip labral tears cause significant pain in the hip and groin and can also cause clicking and clunking and giving way of the hip. It is possible that a second reported fall was a direct result of the pain and instability caused by the January event. Again, I would encourage the reviewer to clarify this with [the appellant].

...

1. What is your response to the opinion from ACC that [the appellant's] injuries have resolved?

The medical evidence from Mr Crawford's assessment of [the appellant] from July 2019 clearly establishes that she was still at that time suffering from pain, reduced range of motion, and an inability to walk without crutches. Irrespective of the code applied to her claim she is suffering from incapacity. I would agree with the clinical advisor that a contusion should have resolved in this timeframe. Clearly [the appellant's] ongoing capacity is not related to a contusion. It is related to something else.

2. Is it more likely than not that the injury caused the labral tear?

The most likely cause of the labral tear is trauma and as such the event of 13.01.19. This is because there is no record of any structural abnormality of the hip that could have caused the tear and there is no report of any associated changes in the right hip cartilage which would indicate the presence of osteoarthritis (a degenerative condition). The patient is reported as presenting with quite significant disability as a result of the January 2019 fall with no history of pre-existing disease or disability.

3. Conversely, is it more likely that the tear is wholly or substantially related to a pre-existing degenerative condition?

Please see above. Obviously, there is the question that a tear may have been seen in the other hip. This was not the hip the MRI was taken to view and was mentioned as an incidental finding. A tear was not confirmed. Looking again at the clinical findings reported by Mr Crawford, the left hip is clearly completely pain free and has a full range of motion.

[30] On 29 April 2020, the Corporation's Clinical Advisory Panel (CAP) reported:

... the CAP concluded that [the appellant's] right hip, leg and lower back have been comprehensively investigated and there is no evidence of a physical injury or condition to explain her presentation of chronic lower back, right hip and right leg pain and associated disability.

...

It is the CAP's consensus opinion that [the appellant's] bilateral acetabular labral tearing is most likely degenerative in nature and an incidental finding which is not related to [the appellant's] complex presentation, and not related to her ACC-covered accidents on 23/05/2017, 13/01/2019 and 20/02/2019.

...

The CAP explained that, in the absence of a diagnosis of any physical injury or condition, it is not possible to comment on the cause of [the appellant's] presentation. It possible has multifactorial and complex aetiology, perhaps best explained by the Auckland Regional Pain Service multidisciplinary team.

Submissions for the parties

[31] Mr Hinchcliff submitted the medical evidence proves Ms N's labral injury was caused by accident because: there were no pre-existing gradual process conditions, the contemporaneous medical information described a high force injury, the contemporaneous information described effusion within the hip, medical evidence reported that the accident caused the labral injury, and the hip pain continued since the injury.

[32] Mr Hinchcliff also submitted Ms N should have cover for a hip contusion injury suffered on 20 February 2019 because the Corporation has not provided any evidence that the hip contusion resolved.

[33] In Mr Hinchcliff's submission, the Corporation's failure to assess the third review application means there is a deemed decision in favour of Ms N. The subject of that review application was whether there had been a sufficient notice period suspending weekly compensation. Mr Hinchcliff submitted there should have been at least 4 weeks' notice, whereas only two weeks' notice was given, and Ms N seeks two weeks of further compensation.

[34] Ms Becroft submitted there are two decisions on appeal. One declining cover for a labral tear as a result of an accident in 20 February 2019, and the other suspending entitlements for the covered contusion injury. Ms Becroft submitted the appeal is restricted to a consideration of cover and entitlements in relation to the February 2019 accident since no review decision or application has been made in respect of the January 2019 accident. However, Ms Becroft acknowledged the Corporation's medical advisers considered both accidents in their reports.

[35] Ms Becroft submitted there is no medical evidence the labral tear was caused by an accident in February 2019, or further, that Ms N's incapacity as at August 2019 was a result of the covered contusion(s).

[36] In Ms Becroft's submission, although four weeks' notice is often given, two weeks' notice was sufficient and reasonable in the circumstances. Further, although

three review applications were submitted, two of them related to the 15 August 2019 decision, and they were treated as duplicates.

Legal framework

[37] Section 20(2) of the Accident Compensation Act 2001 (the Act) provides a person is entitled to cover for personal injury caused by accidents.

[38] "Accident" is defined by s 25 of the Act and includes a specific event or series of events other than a gradual process that involves the application of force or resistance, the sudden movement of the body to avoid a force or resistance, or a twisting movement of the body.

[39] "Personal injury" is defined at s 26 of the Act and includes, for example, a strain or sprain.

[40] Section 26(2) and (4) exclude from the definition of personal injury injuries caused wholly or substantially by a gradual process, disease, infection or the ageing process.

[41] The power for the Corporation to suspend entitlements is set out in s 117(1) of the Act 2001 which provides:

117 Corporation may suspend, cancel, or decline entitlements

- (1) The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.

[42] It is well established, pursuant to the decision of Mallon J in *Ellwood v Accident Compensation Corporation*¹ that before the entitlements of a claimant can be suspended the Corporation must show that it had a sufficient basis on which entitlements should be suspended, with her Honour noting in particular:

The claimant is not present at the first stage so the obligation must be on ACC at this stage to obtain sufficient evidence ... if there is an insufficient basis then the test of "is not satisfied" is not met. If there is a sufficient basis then ACC can be "not satisfied" of the right to entitlements. As the reviewer and the

¹ *Ellwood v Accident Compensation Corporation* [2007] NZAR 205 (HC) at [64].

District Court apply the same test the same approach should be taken at each stage.

[43] As a result before the medical evidence adduced by both parties after the Corporation's decision can be considered, this Court must first be satisfied that the Corporation had a sufficient basis to be not satisfied that Ms N had a right to continue to receive entitlements at the time the decision to suspend was made. Only if this can be established does the Court then consider whether there remains a sufficient basis to be not satisfied having regard to all the evidence now before the Court.

[44] The starting point is s 67 of the Act which provides:

67 Who is entitled to entitlements

A claimant who has suffered a personal injury is entitled to 1 or more entitlements if he or she—

- (a) has cover for the personal injury; and
- (b) is eligible under this Act for the entitlement or entitlements in respect of the personal injury.

[45] As a result, the correct approach in determining whether a claimant is no longer entitled to an entitlement or entitlements is to consider whether the two components of s 67 continue to be satisfied. In other words, entitlements can only be suspended under s 117(1) if either of the two requirements in s 67 are not, or are no longer, met.

Issues

[46] In a memorandum dated 6 July 2020, Mr Hinchcliff set out the issues for the appellant which are more detailed than the agreed issues of counsel. Mr Hinchcliff described the issues as being whether Ms N is entitled to:

- [a] Cover for a labral tear for the 13 January 2019 accident;
- [b] Cover for the 20 February 2019 injury;
- [c] Reinstatement of her entitlements because the suspension decision was not correct;

[d] A deemed decision due to the Corporation's non-compliance with the Act following a review application regarding the reasonableness of only two weeks' notice of suspension of weekly compensation; and

[e] Four weeks' notice and weekly compensation for the remaining two weeks.

Issue One: Whether Ms N is entitled to cover for her labral tear.

Jurisdiction

[47] Mr Hinchcliff submits the accident of 13 January 2019 caused Ms N's labral tear in her right hip. Ms Becroft raised a jurisdictional question.

[48] The Corporation accepted deemed cover for a labral injury as a result of the 13 January 2019 accident on 26 July 2019 and then revoked deemed cover by decision dated 15 August 2019. Ms Becroft submitted no review application was ever lodged in respect of this decision, so it cannot be considered at this appeal.

[49] Ms Becroft's submission is technically correct. Ms N never sought to review the decision of 15 August 2019 which assessed whether the accident on 13 January 2019 caused her labral tearing. However, there is some confusion surrounding this issue.

[50] Some of this confusion arises from Mr Mercer's advice of 14 August that all of the claims be treated as a single claim. As a result, the claim summary sheet has a mess of dates and claim numbers which do not match-up. For example, claim number ...67 was originally made in respect of the 20 February 2019 accident. Following Mr Mercer's advice, it was re-dated to the 13 January 2019 accident. Further, claim number ...78 originally related to the accident of 13 January 2019. However, when claim number ...67 was re-dated, claim number ...78 was labelled as a duplicate. This means the claims relating to the 13 January and 20 February accidents were treated as duplicate claims.

[51] The Corporation issued two decisions on 15 August 2019. Even though the review applications relate to only one of those decisions, it was clearly thought both

decisions were in contention. It appears the Reviewer thought so when he stated "if either the accident on 13 January 2019 or 20 February 2019 is the likely cause" of the labral tear. Ms Becroft acknowledged the issue, submitting that a generous approach be taken:

He [the Reviewer] looked at both [dates], and also in fairness, the medical evidence in this case by the time the decisions were issued also considered both, so I think from a practical perspective, the muddle that has occurred here actually hasn't impacted on the substance of the decisions but what it does do in my submission is increase the need perhaps for a generous approach when we're looking at jurisdiction and the extent to which we consider both accidents in this case.

[52] I find the Corporation has contributed to at least some of the confusion surrounding the review applications. There is no record of the Corporation objecting to the Reviewer assessing the 13 January 2019 accident. In these circumstances, I agree a generous approach is warranted. Accordingly, both the January and the February 2019 accidents will be taken into consideration.

[53] I turn to consider whether either accident caused the labral tear.

[54] Ms Noventa commented the most likely cause of the labral tear is trauma arising from the accident of 13 January 2019. She opined there was no structural abnormality or degenerative condition which could have caused the tear. Ms Noventa also noted though the MRI reported there may have been a tear in the left hip, the tear had never been confirmed and the left hip was pain-free with a full range of motion.

[55] On the other hand, the CAP consensus is the right hip labral tear was not caused by either the fall in January 2019 or the fall in February 2019, for the following reasons:

[i] The fall on 13 January 2019 does not seem to have been significant because Ms N did not report it for six months;

- [ii] The tearing appeared in both hips, which is difficult to understand because Ms N fell on her right side in both accidents. Bilateral labral tearing points to a degenerative cause;
- [iii] It is difficult to tear a healthy labrum, and the mechanism described by Ms N is not consistent with how labral tears normally occur;
- [iv] While Ms N experienced pain, she did not describe an immediate, severe impairment stopping her usual activities. The evidence showed she was walking with her grandchildren at the end of January with symptoms recorded as a gradual worsening over time, consistent with gradual symptom aggravation;
- [v] The onset of symptoms should not be confused with the cause of the acetabular labral tearing; and
- [vi] Many people in Ms N's age demographic experience similar labral tears which probably present the natural history of an aging joint.

[56] CAP commented on Ms Noventa's report, indicating she did not appear to have been provided with all the information on file. CAP noted while Ms Noventa listed common symptoms of people with labral tears, Ms N had not actually exhibited those symptoms. CAP acknowledged Ms N does not have impingement or osteoarthritis. However, CAP explained this does not rule out the tear as being caused by age-related degeneration of the labrum.

[57] Both Ms Noventa and CAP discussed the issue of bilateral tearing. CAP accepted the MRI overview of both hips that bilateral tearing occurred, whereas Ms Noventa considered there was insufficient evidence to confirm the tearing.

[58] In my opinion, the approach taken by the Reviewer to the issue is sensible:

The radiologist thought the left hip abnormality was sufficiently evident to note it on the report. I have taken it into account but have placed less weight on this issue. In my view all that can be said about this evidence is that it is more likely

than not that [the appellant's] left hip does seem to be affected by abnormality, which could or could not be indicative of a bilateral problem.

[59] Adopting this approach, there is insufficient evidence on the balance of probabilities to make a finding there is bilateral tearing. It follows, CAP's statement about bilateral tearing indicating degeneration must be treated with care as the evidence is not sufficiently clear.

[60] However, I accept CAP's analysis of a gradual onset of symptoms, which is also supported by Mr Crawford's report of 19 June 2019:

History – [The appellant] had a bad fall at Hobson Point when she fell off a walkway and onto another one. She landed on her right hip. She had pain in the buttock and the groin following this and this **got a lot worse at the end of January when she went walking** with her grandchildren and got sudden, severe, deep groin pain and could hardly walk following this. She has subsequently had to use crutches since then. She describes very clearly a C type pain deep in the groin. This is fairly classical of labral pathology or joint pathology. She feels it is very deep and it grinds in the hip. She has never had a problem with it before.

[Emphasis added]

[61] Ms N's evidence is that pain and discomfort gradually increased from the 13 January 2019 accident. The fall in February may have made it worse, but walking with her grandchildren at the end of January also made it worse.

[62] In a study cited by CAP, the authors addressed the mechanism of labral tearing:²

Historically, labral tears were associated with slipped capital epiphyses, Legg-Calve-Perthes disease, major structural abnormalities of the hip, or high-velocity trauma, such as motor vehicle accidents or falls. It is now proposed that there are at least five aetiologies of labral tears-trauma, FAI, capsular laxity/hip hypermobility, dysplasia, and degeneration.

Although unusual, isolated traumatic tears of the labrum do occur. These are often a result of significant trauma to the hip joint during contact sports or trauma resulting in either subluxation or dislocation of the femoral head. These traumatic labral tears are often associated with chondral injuries to the femoral head and/or acetabular rim injury. Damage to the acetabular labrum has been reported as a cause of

² Megan M Groh and Joseph Herrera "A comprehensive review of hip labral tears" (2009) 2 Curr Rev Musculoskelet Med 105 at 107 and 109.

irreducible dislocation or recurrent dislocation after traumatic dislocation of the hip. Posterior hip dislocations produce posterior labrum tears.

...

Degeneration is the final described aetiology of labral tears. It has been suggested that these tears may represent the natural history of the aged joint, as labral abnormalities have been found in patients without hip pain with the incidence increasing with age. In cadaver studies, labral tears and abnormalities were found in 93-96% of hips.

...

Labral tears in the athletic population can occur from an isolated traumatic event or from repetitive trauma. Hip dislocations are susceptible to labral tears, and acetabular fractures that occurred from football injuries have also been associated with labral tears. However, up to 74.1%, are not associated with any known specific event or cause, and these are generally insidious in onset, with the underlying inciting event thought to be repetitive microtrauma. Athletic activities that involve repetitive pivoting motions on a loaded femur have been associated with damage to the acetabular labrum. Specific sporting activities, such as soccer, hockey, golf, and ballet, have been linked to labral abnormalities, because they require frequent external rotation. Some tears also have been attributed to running and sprinting. The end-range motion in positions of hyperabduction, hyperextension, hyperflexion, and external rotation is thought to contribute to the higher incidence of labral tears seen in this population of active individuals. It is thought that the labrum takes on a weight-bearing role at the extreme of motion with excessive forces leading to tearing.

[Emphasis added]

[63] Of the five cited aetiologies noted in this extract, only two appear to be relevant to Ms N's situation, trauma and degeneration. The study indicates that trauma may cause tearing. However, the study also indicated that traumatic tears are often a result of significant trauma causative of either partial or complete dislocation of the femoral head. There is no evidence of any form of dislocation in the medical imaging. Further, the contemporaneous evidence shows Ms N did not experience the severe, immediate and disabling pain normally associated with dislocation injuries.

[64] On the other hand, there are at least two possible alternative explanations for the hip injury noted by CAP supported by the medical literature. First, labral tears may be caused by the aging process in joints, and symptomatic labral tears have been found in cadaver studies with incidence increasing with age.

[65] Second, up to 74.1% of labral tears in athletes do not have a known cause with the underlying inciting event thought to be "repetitive microtrauma", involving

"repetitive pivoting motions on a loaded femur" and "frequent external rotation". As a caregiver, it may be that Ms N's work entailed repetitive pivot motions on a loaded femur when she lifted persons or heavy objects.

[66] In her report of 28 June 2019, Ms Reid, Clinical Advisor, did not consider the labral tear was injury related. She provided reasoning regarding:

- The absence of any x-ray evidence of acute pathology such as fracture or dislocation;
- The evidence of bilateral paralabral cysts, suggestive of non-traumatic condition;
- The fact that labral tears are present in the asymptomatic population;
- Labral tears can result from repetitive micro-trauma; and
- The delay in the claim for incapacity (she explained an acute labral tear would likely cause incapacity immediately).

[67] Ms Johnson-Chung relied on similar factors.

[68] I now turn to consider whether the labral tear caused Ms N's pain.

[69] On 19 June 2019, Mr Crawford reported:

Treatment Plan - I am going to get a cortisone and local anaesthetic injection into the hip joint and then examine her immediately after this to confirm that the pain is intra articular. I think then she may well need to proceed with a hip arthroscopy and labral repair.

[70] On 7 August 2019, Dr Thomson conducted a steroid injection.

[71] Following the injection, Mr Crawford reported:

A cortisone injection into her right hip joint did not relieve her pain at all and I have subsequently done a MRI scan of her lumbar spine which shows a small right sided disc protrusion which is contacting the S1 nerve root on the right and I think this is what is probably giving her her right leg pain which goes down to her calf.

[Emphasis added]

[72] Commenting on Mr Crawford's report, CAP stated:

Mr Brownlee, Mr Crawford and Mr Barnes all noted [the appellant's] chronic disabling pain, using crutches and her not weight bearing. **In his 19/06/2019 report, Mr Crawford noted that [the appellant's] pain was "probably" related to her acetabular labral tearing and he planned to investigate that with a diagnostic injection of local anaesthetic and steroid.**

The injection occurred on 07/08/2019 and both Mr Crawford and Mr Barnes noted that this made no difference to [the appellant's] symptoms. The CAP explained that this was a diagnostic test which confirmed that the labral tear was not likely to be the cause of [the appellant's] right lower back, right hip and right leg symptoms.

Following his 19/06/2019 report, Mr Crawford went on to investigate [the appellant's] lumbar spine and Mr Barnes repeated the pelvic MRI scan and did nerve conduction studies and a whole-body bone scan. None of these investigations yielded any evidence of a physical injury associated with [the appellant's] 23/05/2017, 13/01/2019, and 20/02/2019 falls.

CAP concluded that a physical cause of [the appellant's] complex presentation cannot be established. CAP explained that, in the absence of a diagnosis of any physical injury or condition, it is not possible to comment on the cause of [the appellant's] presentation. It possibly has multifactorial and complex aetiology, perhaps best explained by the Auckland Regional Pain Service multidisciplinary team.

[Emphasis added]

[73] Mr Crawford's tests and the analysis of those tests by the CAP, show Ms N's pain symptoms are not caused by the labral tear.

[74] The following statement from the Corporation's notes in evidence reported other issues regarding Ms N's presentation which were raised by Dr Stirling:

Dr Stirling - called back. CM has discussed [the appellant's] weekly compensation is stopping from tomorrow. **[The appellant] is asking about continuing payment under 2017 claim, we would need to look into whether she would be eligible under that claim of 2017. Dr has provided WINZ med cert on 15/08 to 15/11 so will not be issuing further ACC med cert.**

"I have caught her walking when she appeared in clinic one day with her daughter - she seemed to be taken by surprise, not using crutches, she quickly grabbed hold of wheelchair to support herself. Gait is out of keeping with labral tear, Dr Stirling was concerned about presentation so made referral for specialist for further assessment. There appears to be concern presentation is financially driven. Dr agrees with ACC decision/clinical advice is well within reason.

[Emphasis added]

[75] If Dr Crawford's tests had not been carried out, it would have been difficult to assess whether to give any weight to this report. However, I accord some weight to Dr Stirling's opinions because of her status as Ms N's treating GP.

[76] Mr Hinchcliff submitted Ms N had not experienced hip problems before her fall in January 2019. Ms Becroft drew the Court's attention to two claims lodged for back injuries in May 2017 for which Ms N has cover.

[77] A client contact note of August 2019 records Ms N referring to a report in 2017 from Mr Brownlee, Orthopaedic Surgeon, that "I've been in pain due to the back and hip area".

[78] Mr Crawford is unsure whether the pain is coming from the hip, and that it may well emanate from the back. Ms Becroft submitted Mr Crawford filed no treatment reports under the 2017 claim.

[79] Even if the falls of January and February 2019 caused the labral tear, Ms N would not be entitled to cover for her hip pain as there is insufficient evidence connecting the hip pain to the labral tear.

[80] Further, I consider even if the falls of January and February 2019 caused the onset of pain which led to Ms N's incapacity, this does not connect the falls to the labral tears; it only connects them to the onset of pain.

[81] In conclusion, I prefer the opinions of the clinical advisors and CAP, because of the medical reasoning. I find the evidence does not support cover for a labral tear.

[82] For the sake of completeness, Mr Hinchcliff referred to *Hamilton v Accident Compensation Corporation*, citing the following passage:³

[16] The first point that should be noted is that whilst it was the case that cover was granted to the appellant for a left neck sprain injury, the legal position is clear that if subsequent investigations into the appellant's injury condition identifies a more specific medical condition as having arisen from that injury event, then that condition is to be taken as being included in the covered injury.

³ *Hamilton v Accident Compensation Corporation* [2013] NZACC 14.

[83] Given the conclusion I have reached, it follows the labral tear is not taken as being included in the covered injury.

[84] The Corporation was correct in declining cover for the labral tear.

Issue Two: Whether the suspension decision was correct

[85] Ms N received cover for right hip and thigh contusion(s) suffered on 20 February 2019. Ms N continues to retain cover for this injury and cover is not in issue. Instead the question is whether the Corporation was correct in suspending entitlements arising out of that covered injury. If the contusion injury resolved, then Ms N will not be eligible for weekly compensation as she is “no longer unable, because of her personal injury, to engage in employment in which she was employed when she suffered the personal injury” pursuant to s103(2) of the Act.

[86] Mr Hinchcliff submitted when the Corporation terminated entitlements for the contusion, no evidence was available at that time proving that it had resolved. However, this is incorrect.

[87] The evidence supporting suspension at the time it was issued included a panel review in July 2019 which noted the medical evidence regarding the labral tearing and that a clinical referral was required to consider whether incapacity was due to the covered contusion. Referral was made to Ms Johnson-Chung who reviewed patient notes and imaging and she opined the February 2019 contusion resolved, and no clinical notes supported any contusion injury sustained in January 2019.

[88] On 14 August 2019, a technical specialist appeared unaware of Ms Johnson-Chung’s report. He recommended consultation with Dr Stirling given her medical certificate dated 9 August 2019 that incapacity was due to a labral tear caused by 13 January 2019 accident. He commented:

If the doctor does consider there is still incapacity due to a 7-month old contusion injury, they will need to explain the basis for such a conclusion as well as identify the symptoms and signs on examination which can be attributed to a contusion injury as distinct from the now diagnosed labral tear injury.

If the doctor confirms that the client is no longer incapacitated by her covered contusion injury, then ACC would be able to suspend entitlements given that incapacity will not be due to a covered injury.

[Emphasis added]

[89] Mr Hinchcliff pointed out that Mr Mercer refers to the contusion injury having been suffered on 13 January 2019. This mistake appears to have arisen because Mr Mercer thought claim number ...78 was lodged to correct the date of accident from 20 February 2019 to 13 January 2019. Further, Mr Mercer was referring to Dr Stirling's medical certificate which referred to an uncovered injury as responsible for incapacity. In summary, the Corporation relied on Ms Johnson-Chung's review of evidence to support suspension, that the contusion had resolved, and any ongoing symptoms were not related to the covered injury.

[90] The Corporation suspended entitlements on 15 August 2019:

After carefully assessing all the medical information available, we're unable to continue with your entitlement. We've now suspended your entitlement to ongoing treatment costs and weekly compensation and you'll receive your last payment on 29/08/2019.

We're unable to continue providing you with this support as this medical information shows that your current condition is no longer the result of your personal injury of 20/02/2019.

The medical information supports your hip contusion has reasonably healed and your time off work is due to an Acetabular labrum tear that has not been caused by your accident.

[91] I turn to consider whether the suspension decision was correct in light of all the information before the Court.

[92] On 28 August 2019, one day before the suspension took effect, Dr Stirling contacted the Corporation. The internal note records:

Dr Stirling - called back, CM has discussed [Ms N's] weekly compensation is stopping from tomorrow. ... **Dr agrees with ACC decision/clinical advice is well within reason.**

[Emphasis added]

[93] The contusion was discussed by Ms Noventa in December 2019 who agreed with the report of Ms Johnson-Chung:

I would agree with the clinical advisor that a contusion should have resolved in this timeframe. Clearly [the appellant's] ongoing capacity is not related to a contusion it is related to something else.

[Emphasis added]

[94] The reports of the clinical advisers, the CAP and Ms Noventa make no suggestion that the ongoing symptoms experienced by Ms N were as result of her covered injury.

[95] In consequence, when the suspension decision is considered in light of all the evidence now before the Court, it is clear that the situation remains as it did as at the date of the suspension decision, and I find that the suspension decision is correct.

Issue Three: Whether there is a deemed decision in respect of the third review decision.

[96] After having cover denied in August 2019, Ms N filed three review applications. The first application purported to relate to a decision letter of 28 June 2019. The reasons stated in the first review application were:

- (i) The Corporation was incorrect in declining cover under this claim.
- (ii) The labral injury was caused by the covered accident.
- (iii) Once a full review of the medical information has been conducted more reasons will be given.

[97] The second review application purported to relate to a decision letter of 15 August 2019. The reasons stated in that application were:

- (i) The Corporation was incorrect in suspending entitlements under this claim.
- (ii) The current hip problems were caused by the covered accident.
- (iii) The hip injury had not resolved at the time of the suspension of the entitlements.

- (iv) Once a full review of the medical information has been conducted more reasons will be given.

[98] The third review application purported to relate to a decision letter of 15 August 2019. The reasons stated in that review application were:

- (i) The Corporation was incorrect in suspending workers weekly compensation payments under this claim.
- (ii) Two weeks' notice period for a suspension of weekly compensation is not reasonable.
- (iii) The current hip or lower back problems affecting [Ms N's] ability to work were caused by the covered accident.
- (iv) Once a full review of the medical information has been conducted more reasons will be given.

[99] Mr Hinchcliff submitted the third review application was filed in accordance with the requirements of s 135 of the Act. He submitted the Corporation did not respond to the application and did not engage a Reviewer. Mr Hinchcliff submitted that a deemed decision in respect of that application arose under s 146 of the Act.

[100] Ms Becroft countered that on their face, the second and third review applications appeared to apply to the same primary decision, and therefore the Corporation is entitled to treat the third review application as a duplicate or an update of the second review application which did not require any response.

[101] Both the second and third applications state they relate to a decision of 15 August 2019. Further, both decisions also refer to the relevant claim number as being: ...67. The Corporation sent two decision letters on 15 August 2019 to Ms N. One related to claim number ...78 and the other related to claim number ...67. As both review applications stated they dealt with claim number ...67, I find it was reasonable that the Corporation assumed both applications related to the same decision.

[102] In my opinion, the reasons cited in both applications do not add much to the analysis. The language of the second application is vague. The second reason in the application states the current hip problems were caused by the covered accident - this appears to be a reference to the causation problems surrounding the labral tear discussed in the first decision under claim number ...78. On the other hand, the third reason in the application states the hip injury had not resolved at the time of the suspension of entitlements. This appears to be a reference to the contusion which the Corporation discussed in the second decision letter, that is, claim number ...67. On this basis, I find the review application purported to apply to both review decisions.

[103] The third application appears ambiguous. The first reason states the Corporation was incorrect to suspend weekly compensation payments in a reference to the suspension of weekly compensation discussed in the second decision under claim number ...67. The third reason claimed the hip or lower back problems affecting Ms N's ability to work were caused by the covered accident. This again appears to be a reference to the causation issues regarding the labral tear discussed in the first decision letter, under claim number ...78. On this basis, I find this review application also purported to apply to both decisions.

[104] Finally, I take into account Mr Hinchcliff's submission "in that letter, there were a number of decisions, and so, two applications for review were lodged ... two entitlement decisions can have two review applications". It appears counsel intended the review applications to apply to the two separate decisions of 15 August 2019. However, if this was the intention, then the claim number was incorrectly stated. In my opinion, this mistake, together with the vague language used in both applications made it difficult for the Corporation to ascertain Mr Hinchcliff's intention.

[105] In my view, it was reasonable for the Corporation to assume that both review applications related to claim number ...67 rather than claim number ...78 because both review applications referred to ...67. Given the vagueness of the drafting in both review applications, I consider the Corporation had no reason to take any other approach. Further, given the Corporation received both applications on the same day and they looked relatively similar, it was reasonable for the Corporation to amalgamate the two applications and treat them as duplicates. In my opinion, it is

reasonable the Corporation has some discretion to treat claims as duplicates to ensure that public resources are not wasted setting down hearings for duplicate matters.

[106] Having concluded the Corporation was entitled to treat both review applications as relating to the same decision letter, the next issue which arises is whether the Corporation was bound to respond to both applications.

[107] Section 136 of the Act provides:

136 Corporation to acknowledge receipt of review application

When the Corporation receives a review application, it must send the applicant an acknowledgement-

- (a) indicating when the review application was received; and
- (b) containing an explanation of the effect of sections 146 and 147.

[108] Under s 136, the Corporation must acknowledge receipt of both review applications. Even if it chose to treat one application as a duplicate, the Corporation should have acknowledged the review application was received. The Corporation should have also informed Ms N that one of the review applications was being treated as a duplicate which would have enabled her to respond appropriately.

[109] However, my conclusion in respect of s 136 does not mean Ms N was entitled to a deemed decision.

[110] Section 146 of the Act relates to deemed decisions and states:

146 Deemed review decisions

- (1) The reviewer is deemed to have made a decision on the review in favour of the applicant if-
 - (a) the date for the hearing has not been set within 3 months after the review application is received by the Corporation; and
 - (b) the applicant did not cause, or contribute to, the delay.
- (2) The date of the deemed decision is 3 months after the review application is received.

[111] A deemed decision does not arise in situations where the Corporation fails to acknowledge receipt. It only arises where the Corporation has not set a date for the

review hearing within 3 months of the review application. Here, the Corporation appears to have set a hearing date within the required 3-month period. The Act does not require the Corporation to specify the exact issues to be resolved at the hearing. It also does not prohibit the Corporation from setting a hearing date which will resolve two review applications. It only requires that a hearing date be set. The exact scope of the issues can be resolved prior to, or at the hearing. The Corporation set a hearing date for the reviewer to review any issues arising from decision number ...67. In my view, this was sufficient.

[112] When discussing the issue of the purported deemed decision, the Reviewer determined:

I have considered whether a deemed decision arose, because the issue of Weekly Compensation had not been set down as a separate and distinct review.

In my view the decision of 15 August 2019, deals with suspension of entitlements generally, and the issue of termination of weekly compensation flows naturally from that. I have the matter before me and I can consider all aspects.

[113] If the reviewer had declined to assess that application for lack of jurisdiction, it would have been clear the Corporation had not set down a hearing date. Since the reviewer was able to assess all aspects of the decision, no prejudice can be said to have arisen in respect of the third review application. While counsel may theoretically have spent more time preparing for this particular issue if he had been aware the Reviewer would address it, I am not convinced this was sufficient to prejudice Ms N.

[114] Finally, I observe a deemed decision can only arise where an applicant has not caused or contributed to the delay. I suggest that the Appellant, or her lawyer, contributed to any delay that can be said to have arisen. Although the Corporation should have checked with counsel before treating the applications as duplicates, the fact that the applications both used the same claim number and used broadly similar and vague language meant it was reasonable to treat the applications as duplicates.

[115] I conclude the claim for deemed cover cannot succeed. It is clear the Corporation made some mistakes. They should have advised their decision to treat

the third application as a duplicate of the second application. On the other hand, the Corporation was not entirely at fault given the drafting of the review applications which I have discussed. For this reason, the claim fails under s 146(1)(b) of the Act without any serious concern that Ms N has been materially prejudiced.

Issue Four: Whether a further two weeks compensation should be ordered.

[116] Mr Hinchcliff submitted when the Corporation suspended entitlements on 15 August 2019, two weeks' notice was insufficient. He submitted four weeks' notice should have been provided. Ms Becroft submitted the Act only requires reasonable notice be given and it does not identify a specific notice period. Although the Corporation acknowledges that four weeks' notice is often given, its position is two weeks' notice is reasonable.

[117] Section 117 of the Act provides that reasonable notice must be given when entitlements are suspended:

117 Corporation may suspend, cancel, or decline entitlements

- (1) The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.
- (2) The Corporation must give the claimant written notice of the proposed suspension or cancellation within a reasonable period before the proposed starting date.

[118] When the current Act was introduced in 2001, the Department of Labour reported to the Parliamentary Select Committee that:⁴

Reasonable is not time limited and provides sufficient flexibility in order to allow for individual circumstances, such as the nature of the entitlement, reasons for suspension, [and] the duration they were receiving the entitlement. Having a timeframe might disadvantage some claimants.

[119] When addressing the issue of "reasonable" notice, the Reviewer considered:

I could not see any reason why the notice period of 2 weeks could be interpreted as anything other than reasonable, and in fact 4 weeks' notice cannot be regarded as fair to the scheme generally or consistent with the intention of the legislature.

⁴ Department of Labour Injury Prevention and Rehabilitation Bill: Departmental Report (June 2001) at 112.

[120] In my opinion, the Reviewer over-stated the position. There may well be situations where four weeks' notice is too much, but there will be situations where four weeks' notice will be necessary to allow a claimant to access alternative care and support pathways.

[121] Ms Becroft submitted

Giving two weeks' notice, when it is clear that a bruise injury suffered several months earlier has long since resolved, in my submission is perfectly fair and reasonable".

[122] I agree with this submission. In this case, I find two weeks' notice was reasonable.

[123] For the sake of completeness, the Court observes the evidence shows other factors affecting Ms N, including but not limited to those of a financial nature, that she was struggling with pain in her groin, hip and leg, and there was a need to be sensitive to the risk of triggering mental health issues that had caused her problems in the past.

[124] The Court observes there is currently no clearly indicated cause for the appellant's pain or incapacity which is not a contusion or labral tear. If evidence supporting an alternative cause for Ms N's pain or incapacity is shown, and if there is a causative link to the accidents of January/February 2019 or to a work-related accident, she may be able to make a further claim.

Conclusion

[125] Accordingly, the appeal must fail.

Decision

[126] The appeal is dismissed.

[127] There is no issue as to costs.

Suppression

[128] I consider it is necessary and appropriate to protect the privacy of the appellant. This order, made under s 160(1) of the Accident Compensation Act 2001, forbids publication of the name, address, occupation, or particulars likely to lead to the identification of the appellant. As a result, this decision shall henceforth be known as *N v Accident Compensation Corporation*.

Judge Denese Henare
District Court Judge

Solicitors: ACC Legal Limited, Auckland, for the appellant.
Medico Law Limited, for the respondent.