

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2021] NZACC 150

ACR 178/17

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

Hearing: 11 May 2021
Heard at: Dunedin/Ōtepoti

Appearances: Mr Sara for the appellant
Mr Hunt for the respondent

Judgment: 30 September 2021

**RESERVED JUDGMENT OF JUDGE DENESE HENARE
[Claim for cover for a personal injury,
Accident Rehabilitation and Compensation Insurance Act 1992]**

[1] The appellant, Mr Turnbull, has a history of knee problems since he was involved in a motor vehicle accident in 1994.

[2] In 2011 his right knee gave out when he slipped on rough ground and he sustained a partial tear to the lateral collateral ligament. Medical opinion showed significant lateral compartment degenerative change, most likely related to an accident in 1998 when Mr Turnbull was doing some fittings behind a TV set.

[3] On 1 April 1999, the Corporation declined Mr Turnbull's claim for cover for a right knee sprain injury because it was not the result of an "accident", as defined in the Accident Rehabilitation and Compensation Insurance Act 1992 (the 1992 Act).

[4] In May 1999, Mr Turnbull consulted Mr Fossbender, Orthopaedic Surgeon, who diagnosed a tear of the lateral meniscus of the right knee and recommended an arthroscopy and lateral meniscectomy. The Corporation declined to fund entitlement to surgery because Mr Turnbull did not have a covered injury.

[5] The Corporation's decision was upheld at review on 11 August 1999. This decision was not then appealed.

[6] Mr Turnbull asked the Corporation to reconsider the decision declining cover for the 1998 injury based on a 2016 report from Mr Matheson, Orthopaedic Surgeon. Whilst the Corporation did not dispute Mr Turnbull's current condition may arise from meniscal damage sustained in 1998, it re-affirmed the 1999 decision.

[7] Leave to file the appeal out of time was granted by decision of Judge McGuire in October 2020.¹

Issues

[8] Counsel agreed the overall issue is the correctness of the Corporation's decision of 1 April 1999, declining cover for a right knee strain injury suffered on 22 December 1998.

[9] Counsel also agreed three issues arise:

[a] First, how did Mr Turnbull's injury occur? The Corporation accepts that Mr Turnbull suffered a right knee lateral meniscus tear. However, the parties disagree as to how that tear occurred; and

[b] Secondly, whether Mr Turnbull's injury resulted from an accident under the definition of "accident" in the 1992 Act? This second issue raises two sub-issues:

[i] Whether gravity is a force external to the human body under the 1992 Act

[ii] If yes, whether Mr Turnbull's injury is caused by gravity for the purposes of the Act?

¹ *Turnbull v Accident Compensation Corporation* [2020] NZACC 148.

Submissions on behalf of the parties

[10] In Mr Sara's submission, gravity was not excluded from the definition of accident prior to the enactment of the 2001 Act. Further, he submitted the amendment which explicitly recognised gravity as included within the definition of external force or resistance did not change the fact that gravity is and was a force external to the human body.

[11] Mr Sara submitted there is a line of cases under the 1992 Act which represented the then judicial orthodoxy. However, he also notes more recent cases where gravity is explicitly acknowledged as constituting the requisite application of an external force in the causative process of a personal injury.

[12] Mr Sara submitted the cases under the 1992 Act were wrongly decided and were remedied by the amendment to the definition of accident.

[13] Mr Sara submitted the 2001 amendment did not change the law and this court is not bound by the earlier decisions.

[14] Mr Hunt submitted that cover must be determined under the Act in force at the time of the accident, namely the 1992 Act. He submitted gravity was not specifically included as a force under the 1992 Act.

[15] Mr Hunt submitted there is a line of cases where gravity was not considered a force external to the body. He contrasted these cases with cases under the 2001 Act where gravity was acknowledged by the court as force external to the body.

[16] Mr Hunt submitted an earlier decision from Judge Imrie² which found that gravity was an external force should not be followed because it was subsequently distinguished by other cases. Further, he submitted the fact the definition of "accident" was extended to include reference to gravity, needs to be taken into account, because gravity was not covered under the 1992 Act.

² *Auckland City Council v Accident Rehabilitation and Competence Insurance Corporation* DC Wellington 44/95, 9 May 1995

[17] In Mr Hunt's submission, since gravity was not an external force under the 1992 Act, there was no external force which caused Mr Turnbull's injury.

Issue one: what is the mechanism of injury?

Discussion

[18] What is the mechanism of injury or how did Mr Turnbull's injury occur?

[19] The Corporation's decision of 22 March 2016 relied on a medical case review of February 2016 from Dr Murray, General Practitioner with special interest in occupational and skeletal medicine. He opined Mr Turnbull's lateral compartment osteoarthritis was caused by the partial lateral meniscectomy performed in 1999. In his follow up comments, Dr Murray referred to the pre-operative assessment of Mr Fossbender, orthopaedic surgeon, who diagnosed a tear of the lateral meniscus and requested funding for surgery on 3 May 1999, a month after the Corporation declined cover for the right knee sprain injury.

[20] Dr Murry referred to Mr Fossbender's report and stated:

... but Mr Fossbender's pre-operative assessment of 3/5/1999 is fairly clear that he believes the lateral meniscus was torn in the event of 22/12/98 when standing up from crouching behind a tv set, and it appears this was not covered by ACC at that time as no external force was involved. This was upheld at review on 4/8/99.

This I believe the additional information proved is consistent with the conclusions given in the MCR report.

[21] Mr Turnbull's affidavit evidence is that:

11. I squatted down to get access to the wall plug. As I got to the limit of the squat position, I felt my right knee pop. I managed to stand up using my left leg but my right leg was locked in a 90° angle consistent with the squat position.
12. I managed to flick my right leg and my leg went back into position.
13. Within a few seconds, I experienced a burning sensation in my right knee which then got worse. Then the knee started to swell.

[22] A review of the evidence shows Mr Turnbull has always been candid about his right knee problems dating back to the motor vehicle accident in 1994/1995.

[23] Mr Fossbender reported this history:

He did injure this knee in August 1998 when he was dancing and he twisted around and the knee gave way with pain. There was some swelling, but this then settled down.

He had previously injured this knee in 1995 in a MVA having a dashboard injury at the front of the knee which was quite forceful. There was swelling and pain after this which took a long time to settle down, but eventually did.

[24] Mr Fossbender described the mechanism of injury as causing a new injury on a weakened site:

He was crouching behind a tv set doing some things in an area in an extreme flexed position of both knees. He went to stand up and he twisted the (R) knee in a fairly forceful fashion to get up in the tight area and there was a sudden catch of pain in the lateral compartment and the knee locked. He tried to force it straight and he felt a click and it did improve. Subsequently, the pain persisted and the knee became swollen.

[25] Mr Fossbender explained the meniscal tear injury was sustained by way of a forceful twist on a fully extended knee:

I consider that this was done by accident given that he had a forceful twist on a fully flexed knee which is the classical way to tear the cartilage.

[26] Dr Wood's letter dated 14 June 1999 to the Corporation distinguished the force involved in a meniscal injury from the force involved in a sprain injury. He stated:

The meniscus tear suffered by Mr Turnbull is not a consequence of normal daily routine. Mr Turnbull was in a confined space at ground level. In attempting to extricate himself from behind the TV set he exposed himself to the most common force in nature, external to the body. This force being gravity. **If the injury were a simple sprain or strain, one would be inclined to accept the ACC decision to decline the claim. However, the force required to climb out from a confined space was such that he suffered the meniscus tear to an already weakened knee.**

Although the fact that an injury has been suffered does not automatically indicate or presume an accident has been sustained, I tend to agree with Mr Fossbender in his opinion that this injury was sustained by accident in the classical way of a forceful twist on a fully extended knee. I would add that this twist was under the added load of lifting and twisting the body against the force of gravity with one leg in a confined space.

[Emphasis added]

[27] Mr Matheson's opinion appears consistent with that of Dr Woods. Mr Matheson stated:

In my opinion the most significant cause of the degenerative change in the lateral compartment of the right knee is the injury sustained in 1998 when Mr Turnbull squatted down to plug something into his television when in Wanaka on holiday. This is a very typical mechanism for causing trauma to the menisci. He had surgery a few

months later under Mr Fossbender to remove the lateral meniscus. It appears that a partial lateral meniscectomy was carried out. It is well recognised that partial or complete lateral meniscectomy will inevitably lead on to degenerative change in the knee but at varying stages depending on other factors. I note from the information that Mr Turnbull is a heavily built man and leads a very active life and has likely had exacerbating injuries to his right knee. While these **have been important in the genesis of his degenerative change, the primary cause of the abnormality in the right knee leading on to the degenerative process is the tear of the lateral meniscus that occurred in 1998 and the subsequent surgery.**

...

The type of injury Mr Turnbull suffered should undoubtedly be covered by ACC as it is a rotational injury on a weight bearing knee which we know is the force that causes trauma to the menisci of the knee typically. Many cases of meniscal tears in the knee do not involve any associated external force.

[Emphasis added]

[28] Mr Matheson distinguishes the mechanism of injury from others which do not involve any external force.

[29] Following surgery in September 1999, Mr Fossbender commented:

As you are probably aware by now that he did have a lateral meniscus tear which was displaced. Mr Turnbull was turned down by the ACC but at operation it was obvious that there was a tear of the rim which could only be the result of injury or force of an abnormal type.

[30] Following his consultation with Mr Turnbull, Mr Murray reported:

... aged about 22 he squatted down to plug something in behind the TV, and as he crouched down his right knee popped. When he stood up he couldn't straighten his leg, so he flung his leg out to extend his knee which caused another pop and his knee straightened, but his knee then swelled up like a balloon.

[31] The Court asked Mr Sara which of the mechanisms of injury was relied on. Mr Sara indicated Mr Fossbender's description of the mechanism was recorded only months after the event and closer in time.

[32] Mr Hunt submitted it does not matter which version of the accident event in the agreed statement of facts is accepted because neither of them is covered under the 1992 or 1998 Acts. The first version was a twisting event when Mr Turnbull was kneeling on the floor. The second version was when Mr Turnbull twisted his knee when he got up from the

confined position. Mr Hunt submitted the Court should follow the consistent line of cases because the fact situation provides clear example there was no external force.

Conclusion

[33] After reviewing the mechanisms outlined by Mr Fossbender, Dr Murray, Mr Matheson and Mr Turnbull, the Court finds the two versions of the accident event agreed, but counsel presented too brief a summary of them. It is apparent the mechanism of injury entailed the elements of twist, pop and flexing in the actions of squatting, lifting the body up and then flinging out the leg to extend the knee to force it straight. The third element of leg extension which Mr Fossbender referred to as “tried to force it straight’ was not recorded by the Reviewer in 1999.

Issue two: whether Mr Turnbull’s injury is caused by accident under the 1992 Act

[34] Against the factual finding, I turn to consider whether Mr Turnbull’s injury was caused by accident under the 1992 Act and discuss the two sub-issues:

- [i] whether gravity is a force external to the human body under the 1992 Act, having regard to the statutory provisions and the case law; and
- [ii] whether Mr Turnbull’s injury was caused by gravity.

Statutory provisions

[35] Section 3 of the 1992 Act, the interpretation section, defines "Accident":

"Accident" means-

- (a) A specific event or series of events that involves the application of a force or resistance external to the human body and that results in personal injury, but does not include any gradual process; and the fact that a personal injury has occurred shall not of itself be construed as an indication or presumption that it was caused by any such event or series of events; or

...

[36] There was no material change to the definition of "accident" in s 28 of the Accident Insurance Act 1998.

[37] The Accident Compensation Act 2001 (the 2001 Act) which came into force on 1 November 2002, redefined the definition of "accident" to expressly include gravity as a force:

25 Accident

(1) Accident means any of the following kinds of occurrences:

- (a) a specific event, or a series of events, that-
 - (i) involves the application of a force (including gravity) or resistance external to the human body, or involves the sudden movement of the body to avoid such a force or resistance external to the human body; and
 - (ii) is not a gradual process:

...

[38] On 1 July 2005, s 25(1)(a) of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2005 substituted the definition of "accident" above with the definition below, which is the provision currently in force under the 2001 Act:

25 Accident

(1) Accident means any of the following kinds of occurrences:

- (a) a specific event or a series of events, other than a gradual process, that-
 - (i) involves the application of a force (including gravity), or resistance, external to the human body; or
 - (ii) involves the sudden movement of the body to avoid a force (including gravity), or resistance, external to the body; or
 - (iii) involves a twisting movement of the body:

Issue 2 [i] Whether gravity is a force external to the human body under the 1992 Act

[39] I discuss the case law and the Parliamentary resources, including Hansard, in considering this issue.

[40] Counsel referred to case-law which discussed whether gravity is a force or resistance external to the human body and capable of causing injury under the 1992 Act.

[41] The earliest decision considering gravity in the context of the 1992 Act is *Auckland City Council v Accident Rehabilitation and Competence Insurance Corporation*.³ In that decision, Judge Imrie held:

The force that results in personal injury will often be the force of gravity.

Mr Adam suffered the injury to his back when falling or landing on the path.

It is a logical inference from the evidence that falling on his left side involved "the application of a force or resistance external to the human body" within the meaning of those words as used in the definition of "accident" in s 3(1), the "force external to the human body" being the force of gravity which forced his body to the ground causing low back strain or the "force or resistance external to the human body" being the contact with the path causing low back strain.

[42] Judge Imrie determined that gravity was a force external to the human body.

[43] In *Coeur Gold NZ Ltd v Accident Rehabilitation and Compensation Insurance Corporation*,⁴ the appellant suffered a prolapsed disc in his back when leaning over. Judge Middleton stated:

Both counsel have submitted that it is necessary first to ascertain whether the worker has suffered an accident in terms of s 3 of the Act. While Mr Cleary has submitted that the incident in which this worker was involved is similar to the position of the worker in *Auckland City Council v ARCIC*, I do not accept that submission. I do not consider that in this case the worker suffered an external resistance to his body and that what occurred was as submitted by Ms Meechan, that the worker only moved his body and that it was some internal force within the body which affected his back. It may well have been that the pain was as a result of the already prolapsed disc which had certainly been in existence for some time. However, in terms of the definition of "accident" I do not consider that there was sufficient resistance external to the worker's body which could be said to have resulted in the personal injury. It must therefore follow that even though the incident occurred at work I do not consider that the worker has suffered a personal injury which constitutes a work injury and the appeal must therefore be allowed.

[44] Judge Middleton distinguished the *Auckland City Council* decision but did not contradict it. However, in 1998 Judge Beattie disagreed with Judge Imrie's approach in *Accident Rehabilitation and Compensation Insurance Corporation v Stephens*.⁵ He held:

³ *Auckland City Council v Accident Rehabilitation and Competence Insurance Corporation*, above n 2, at [19]-[20].

⁴ *Coeur Gold NZ Ltd v Accident Rehabilitation and Compensation Insurance Corporation* 73/97, 29 April 1997 at [8].

⁵ *Accident Rehabilitation and Compensation Insurance Corporation v Stephens* DC Auckland 196/98, 7 September 1998 at [5].

The definition of "accident" in the Act requires that there be the application of a force or resistance external to the human body. It matters not that that force or resistance is natural or artificial. Being struck by a bolt of lightning would be considered no differently than electrocution from contact with a live wire. Furthermore that external force or resistance can be applied by the injured person himself or through some external agency, animate or inanimate. The common thread that must exist is that the source of the force must come from without and not within the human body of the injured person.

With the greatest respect to His Honour Judge Imrie, I do not entirely agree with his analysis of the role of gravity in the accident which occurred to the worker in the Auckland City Council case. Gravity was not the external force which the injury, rather it was the human body heeding the law of gravity which caused it to strike the external force of the pavement and it was that hard pavement which was the cause of the injury, not the force of gravity.

Thus I find that gravity per se is unlikely to ever be the actual force or resistance which causes the injury. It would require another force or resistance external to the body to physically cause the injury in an accident involving the body complying with the law of gravity. Equally of course, an injury could occur during an instance where the human body is defying the law of gravity. Thus gravity alone is unlikely to ever be **the sole cause** or source of the accident.

In this present case the law of gravity is entirely neutral. The evidence is clear that the act of twisting caused disc herniation and the compression of the right L5 nerve root. This injury did not occur during the application of any external force or resistance such as lifting a heavy object, or falling and striking a hard surface. There was no impact between the respondent's body and any other force or source of force or resistance whatsoever.

[Emphasis added]

[45] While Judge Beattie disagreed with Judge Imrie's approach; I observe that he does not exclude gravity as a force external to the human body. His Honour simply noted that gravity is unlikely to be the actual force or resistance which causes the injury. Critically, the analysis in the case is focussed on causation rather than identifying whether gravity is a force.

[46] In *Tavita v Accident Rehabilitation and Compensation Insurance Corporation*⁶, *O'Regan v Accident Rehabilitation and Compensation and Insurance Corporation*, and *Slade v Accident Compensation Corporation*, Judge Beattie referred to his remarks in

⁶ *Tavita v Accident Rehabilitation and Compensation Insurance Corporation* DC Auckland 245/98, 27 November 1998; *O'Regan v Accident Rehabilitation and Compensation and Insurance Corporation* DC Huntly 5/99, 21 January 1998; *Slade v Accident Compensation Corporation* DC Huntly 212/00, 18 August 2000.

Stephens. In *Grayson v Accident Compensation Corporation*,⁷ Judge Middleton adopted the approach in *Stephens* without further discussion of gravity.

[47] In *Biggart v HIH Workable Ltd*,⁸ Judge Barber held on the facts that:

Here, there was merely a movement of muscles internally in the appellant's body. There was no fulcrum. There is no feature, or number of features, which could singly or together constitute external force.

If one adopted the said views of Dr Wilson, then normal activity such as walking, sitting down, and even standing would, in terms of the external forces (gravity and normal ground reaction), be sufficient to create an "accident" within the law. That would be an extreme situation. In any case, the appellant did not bear in any way the application of external force or resistance. She suffered a muscle strain, driven or caused by internal muscular force in her body during her leaning movement. **There was no sudden leveraging action from an external force, - neither by the movement itself**, nor by any overbalancing.

As Dr Wilson pointed out, we are subject to external force all the time as human beings. He would have it follow that any injury situation is an accident coming, at least, from the force of gravity acting on a person's body. **However, the definition of accident in the Act clearly does not contemplate that every situation is covered by the Act. The appellants rely on their said gravity argument. However, if an accident could be caused merely by the forces of gravity without any other external force or resistance, that would make a nonsense of the definition of "accident" in the Act.** It would mean that a person who was simply walking and pulled a muscle in the leg would be covered on the basis that there was friction between feet and ground. This would mean that almost every injury would be covered by the Act.

The appellant was simply undertaking a normal day-to-day activity. There was nothing unusual about her action in endeavouring to switch off the light, nor was there any external force involved in terms of a commonsense approach to the incident. **For there to have been an accident, there needed to be a specific event, or series of events, which involved the application of a force or resistance external to the human body. The said event did not involve any application of a force or resistance external to the appellant's body.** That is a matter of simple commonsense and there is no need to ponder on any scientific elements.

In my view the situation might have been quite different had the injury taken place when there was some additional activity involved such as placing a book on a bookshelf. That would seem to create a further force because the gravitational force of the book would be external to the human body and offer some resistance in the appellant's movement. However, the facts of this case, as I have indicated, are quite simple and I cannot find any element in the occurrence or event of the appellant's turning off the light switch which involved the application of a force or resistance external to the human body, however one might wish to interpret the word "involved".

[Emphasis added]

⁷ *Grayson v Accident Compensation Corporation* DC Wellington 16/2001, 1 February 2001.

⁸ *Biggart v HIH Workable Ltd* DC Dunedin 290/2000, 30 October 2000.

[48] The Court observes two points in this decision. First, His Honour acknowledged that gravity is an external force when he stated: "we are subject to external force all the time as human beings" and "if an accident could be caused merely by the forces of gravity without any other external force or resistance, that would make nonsense of the definition of 'accident'". Secondly, he notes a situation where gravity may cause injury. Although the decision narrows the situations where gravity can be argued as a causative factor, the Court did not rule out gravity as an external force.

[49] In 2001, Judge Beattie expanded his earlier comments in *Stephens* when determining *Lockhart v Accident Compensation Corporation*:⁹

[22] In this case the appellant suffered a meniscal tear to his left knee whilst in the process of moving from a lying prone position to that of standing upright. The injury to his knee did not arise as a result of the knee coming in to contact with any external object, such as would occur if he suffered a blow to his knee.

[23] The exercise which the appellant carried out involved the transfer of his body weight from one point to another and at the same time exercising leverage on one part and then another of his body in the transferring of his body weight or part thereof in the course of standing up.

[24] It is clear that it was when the appellant was transferring his body weight from the part of the body that had formerly been taking it to his left leg as it was in the course of extending to a standing position that his body weight, in a particular and crucial instant of that manoeuvre, caused a strain on his knee and in particular the meniscus, which caused it to tear and thereby caused the two parts of his knee joint to lock and rotate.

[25] In those circumstances, I find that there has been no application of an external force or resistance, the only interaction being the knee joint reacting from an awkward positioning of the appellant's body weight on it during the course of his standing up manoeuvre.

[26] I do not consider, and formally rule, that a person's body weight is per se an external force.

[27] The dictionary meaning of "external" being:

"Coming or acting from without; situated on or near the outside of the body."

[28] As the Court noted in the decision in *Stephens*:

The common thread that must exist is that the source of the force must come from without and not from within the human body of the injured person.

[30] The Court went on to state:

⁹ *Lockhart v Accident Compensation Corporation* DC Auckland 167/2001, 3 July 2001 at [22]–[31].

I find that gravity per se is unlikely to ever be the actual force or resistance which causes the injury. It would require another force or resistance external to the body to physically cause the injury in an accident involving the body complying with the law of gravity. Equally of course an injury could occur during an instance where the human body is defying the law of gravity. Thus gravity alone is unlikely to ever be the sole cause of the accident.

[31] As in the case in *Stephens* the law of gravity is entirely neutral and there is no impact between the appellant's body and any other force or source of force or resistance, rather it was the interaction of two or more body parts in the appellant's knee which caused the meniscus to tear resulting in the knee joint rotating and becoming displaced.

[50] Overall, in each of these cases, gravity was held not to have caused injury and thus the incidents were not "accidents". However, the Court did not expressly rule out gravity as an external force. Judge Imrie addressed the issue squarely, that: "the 'force external to the human body' being the force of gravity".

[51] On the other hand, Judge Beattie took a different approach to interpreting his own decisions in two subsequent decisions. In 2004, His Honour stated in *Johnson v Accident Compensation Corporation*:¹⁰

[31] The definition of 'accident' in Section 25 of the 2001 Act is wider than that of the previous two Acts of 1992 and 1998. The relevant part of the definition for present purposes is that an accident "means a specific event or series of events that involves the application of a force (including gravity) or resistance external to the human body." It is the addition of the words "including gravity" which have been added on to the definitions that previously applied.

[32] It is the case that "accident" was not defined at all in the 1982 Act, but a substantial body of jurisprudence evolved under that Act and I note a comparatively recent statement (for that Act) was made by the Chairman of the Accident Compensation Appeal Authority, Mr B H Blackwood, in the case of *Edwards v ACC* [1990] NZAR 401. At page 405 Mr Blackwood considered previous decisions of the New Zealand Court of Appeal and also the well-known decision of the Chief-Justice in *Wallbutton*. The circumstances in *Wallbutton* were that Mrs Wallbutton bent over to pick up a milk bottle and hurt her back in the course of bending over. The Court approved of that particular incident being regarded as an "accident". **That particular bodily movement would not have come within the definition of 'accident' in the 1992 or 1998 Acts, but by reason of the additional factor of gravity, I consider it more than likely it would be held to be an "accident" under the 2001 Act.**

[33] It was conceded by Counsel for the Respondent at the Review Hearing that the appellant's movements, be it the circumstances as noted by the various doctors, or by the appellant herself subsequently, would come within the definition of 'accident' under the 1982 Act and I concur with that concession and formally find such to be the case.

[34] It seems to me that at the very least the movement carried out by the appellant involved a stretching and extension of the neck, whether or not this was caused by the loss of the supporting pillow or not. I find that in those

¹⁰ *Johnson v Accident Compensation Corporation* DC Wellington 311/2004, 29 September 2004.

circumstances the forces of gravity did enter the picture and I find that the incident involving the extension of the neck did involve gravity, and as such the incident, be it from a fall off the sofa or just as the doctors noted, would as a matter of law amount to an accident within the meaning of Section 25 of the 2001 Act.

[Emphasis added]

[52] In 2006, Judge Beattie made similar obiter comments in *Sonter v Accident Compensation Corporation*:¹¹

[24] Although it is not necessary for the determination of this appeal, nevertheless I consider that some comment should be made on the second ground of declinature advanced by the respondent, namely that the injury did not come about as a consequence of the application of a force or resistance external to the human body. It is to be noted that the definition of 'accident' in Section 25 of the 2001 Act has had added to it the words 'including gravity', as being identified as a force. Those words were not there in the definition in the previous Acts.

...

[26] **As the force or resistance can now include the force of gravity, then I find that the submission made by the appellant has considerable merit, where she identified that the action of the Russian Twist involved her abdominal muscles being used to move her upper body from a prone position to an upright position. I find that those muscles are in effect lifting the weight of her upper body and in so lifting, the weight of her upper body is defying gravity.**

[27] **Gravity would be neutral or zero when she was lying on her back between sit-ups, but when her upper body is being lifted from the floor against the gravitational pull to have it remain on the floor, then I find that her abdomen is experiencing the force of gravity against it.**

[28] I have no quarrel with Dr Austen's identification of what the physical manoeuvre involved. He noted that the rectus sheath muscles were being used to move the upper body, but I disagree with his assessment that the force applied was entirely internal. The lever which Dr Austen referred to was a lever involving leverage against the gravitational pull.

[29] In coming to the finding, I note that this finding is completely opposite to that which the Reviewer opined when he stated:

"In my opinion the action of gravity would be entirely neutral and it cannot be said to be causative. She would likely to have suffered from the same injury if she was performing the sit-ups in zero gravity, for example if she was in an orbiting space station."

For the reasons I have stated, I find that cannot be said to be the case. If the body weight were to be the force or resistance or resistance which was to increase the strength of the abdominal muscles, there would be no resistance from that body weight in a weightless environment.

¹¹ *Sonter v Accident Compensation Corporation* DC Auckland 279/2006, 8 November 2006 at [24] – [30].

[30] It is the case that the observation made by the Reviewer, which I find to be fallacious, does nevertheless illustrate the true role of gravity in the exercise carried out by this appellant.

[Emphasis added]

[53] In both cases, Judge Beattie indicated that gravity was not an external force under the 1992 Act. However, I observe he was not considering the interpretation of the 1992 Act in either of these cases, and he did not assess any of the prior case law.

[54] In my opinion, there is a common theme in the case law. Judge Imrie's conclusion that gravity is an external force, was distinguished in subsequent cases. The ultimate position taken was where bodyweight alone caused injury, that was an internal cause. However, where the weight of something carried by someone caused an injury, that weight could be treated as an external cause. Gravity as an external force was not ruled out, it was described as neutral.

[55] I accept Mr Sara's submission the earlier District Court decisions are not binding on this Court.

[56] I now turn to consider the policy documents before the Parliament and whether they and the Hansard debate on the 2001 Act, assist statutory interpretation here.

[57] The Explanatory Note to the Injury Prevention and Rehabilitation Bill (subsequently enacted as the Injury Prevention, Rehabilitation, and Compensation Act 2001) on cover criteria provides:¹²

Clarification of cover criteria

The Bill clarifies that accidents due to "gravity" will be covered.

[58] The term "clarify" is generally understood to mean:¹³

Enlighten; make clear or plain to the understanding; remove complexity, ambiguity, or obscurity from (a subject, statement, etc.); ...

[59] In my opinion, a word or statement can only be clarified if its meaning was not clear in the first place. The Explanatory Note made plain that accidents due to gravity will be

¹² Injury Prevention and Rehabilitation Bill 2000 (explanatory note) at 5.

¹³ *New Shorter Oxford Dictionary* (vol 1, A–M).

covered and indicates Parliament intended "force" in the 1992 Act to be construed as including gravitational force. This is the interpretation submitted by Mr Sara, and in my opinion, it has merit.

[60] The only reference, in respect of the Injury Prevention and Rehabilitation Bill, to the definition of "accident" in *Hansard* was in the speech of Rodney Hide MP:¹⁴

... My first question involves the definition of an accident, which, I am sure, ... is the heart of this bill. The definition of an accident involves a specific event. I think that is true. Clause 25(1)(a)(i) states that an accident "involves the application of a force (including gravity) or resistance external to the human body, or involves the sudden movement of the body to avoid such force or resistance external to the human body;". Does anybody in the Committee understand what that excludes? Can anybody in the Committee explain to me what that means?

[61] There was no further debate in the House on this aspect of the definition. Mr Hide's questions went unanswered.

[62] The Court observes that the manner in which the amendment is drafted is significant. The original provision refers to the application of a force or resistance external to the human body. The amended provision refers to the application of a force (including gravity) or resistance external to the human body. In my opinion, if Parliament had intended to extend the scope of cover, rather than clarify and provide interpretative guidance, the provision would have been amended to read, "the application of a force, resistance, or gravity external to the human body".

[63] Overall, it appears Parliament intended to clarify and provide interpretative guidance rather than to expand the Bill when the reference to gravity was inserted. The Explanatory Note indicates this position, and it is confirmed by the way reference to gravity is treated.

[64] In my opinion, it is not clear the amendment was directly inconsistent with the case law, because gravity was not fully excluded. The point adduced in Judge Beattie's decisions is not so much that gravity was not an external force, but rather he described gravity as a neutral force.

¹⁴ (6 September 2010) 594 NZPD 899.

[65] This point is further illustrated in three cases determined by Judge Beattie. Under the 1992 Act, His Honour described gravity as neutral in cases where the claimant developed joint problems. In *Stephens* he stated:¹⁵

In this present case the law of gravity is entirely neutral. The evidence is clear that the act of twisting caused disc herniation and the compression of the right L5 nerve root. This injury did not occur during the application of any external force or resistance such as lifting a heavy object, or falling and striking a hard surface. There was no impact between the respondent's body and any other force or source of force or resistance whatsoever.

[66] Similarly, in *Lockhart* His Honour held:¹⁶

[31] As in the case in *Stephens* the law of gravity is entirely neutral and there is no impact between the appellant's body and any other force or source of force or resistance, rather it was the interaction of two or more body parts in the appellant's knee which caused the meniscus to tear resulting in the knee joint rotating and becoming displaced.

[67] However, His Honour subsequently stated in *Sonter*:¹⁷

[26] As the force or resistance can now include the force of gravity, then I find that the submission made by the appellant has considerable merit, where she identified that the action of the Russian Twist involved her abdominal muscles being used to move her upper body from a prone position to an upright position. I find that those muscles are in effect lifting the weight of her upper body and in so lifting, the weight of her upper body is defying gravity.

[27] Gravity would be neutral or zero when she was lying on her back between sit-ups, but when her upper body is being lifted from the floor against the gravitational pull to have it remain on the floor, then I find that her abdomen is experiencing the force of gravity against it.

[Emphasis added]

[68] The Court observes the significance of these cases is His Honour's developing discussion of when gravity is neutral. In *Stephens* and in *Lockhart*, His Honour found that gravity was entirely neutral if it was merely acting on bodyweight. However, in *Sonter* gravity would only be neutral when a person is essentially not fighting gravity, even if gravity is acting on them; for example, when a person is lying down.

¹⁵ *Stephens*, above n 5, at [5]

¹⁶ *Lockhart*, above n 9 at [31].

¹⁷ *Sonter*, above n 12 at [26] – [27].

[69] In *Sonter* and in *Johnson*, Judge Beattie attributed his shift in reasoning when gravity is neutral, to the 2001 amendment. However, this is not so when considering three factual situations where gravity is impacting a body:

- [a] If someone lifts an object, say a book, gravity affects the mass of the book creating what is described as weight. Judge Barber allowed this kind of gravity under the 1992 Act.
- [b] If someone lifts themselves, gravity affects the mass of that person creating body weight. Judge Beattie precluded this kind of gravitational force under the 1992 Act, and described it as neutral, but he allowed it under the 2001 Act.
- [c] If someone is lying on the floor, gravity continues to affect the mass of a person. Judge Beattie described this kind of gravitational force as neutral under the 2001 so long as the person is not moving.

[70] In my opinion, Judge Beattie's later approach as to how gravity can cause injury, is the more compelling of his approaches.

Conclusion

[71] The Explanatory Note to the 2001 Act is an extrinsic aid to statutory interpretation. In my opinion, the drafting shows that Parliament intended to clarify rather than to expand the Bill when the reference to gravity was inserted.

[72] What I consider to be significant about the case law is Judge Beattie's developing discussion concerning when gravity is neutral. In *Stephens* and again in *Lockhart*, he found that gravity was entirely neutral if it was merely acting on bodyweight. However, in *Sonter* he found that gravity would only be neutral when someone is essentially not fighting gravity even if gravity is acting on them; for example, when someone is lying down or in a space.

[73] Having regard to the statutory provisions and the case law, I conclude that Judge Beattie's reasoning in *Sonter* and *Johnson* is the correct framework for assessing whether gravity has caused an injury, both under the 1992 Act and the current legislation introduced in 2001. Therefore, that is the test I apply to Mr Turnbull's injury.

Issue 2 [ii]: Whether Mr Turnbull's injury is caused by gravity under the 1992 Act

[74] I have already discussed in detail the mechanism of Mr Turnbull's injury. After reviewing the mechanisms outlined by Mr Fosbender, Dr Murray, Mr Matheson, and Mr Turnbull, I found the two versions of the accident event agreed by counsel represent too brief a summary of them. It is apparent the mechanism of injury entailed the elements of twist and pop in the actions of squatting, lifting the body up and then flinging out the leg to extend the knee to force it straight.

[75] While Mr Turnbull was squatting down, he was fighting gravity. If Mr Turnbull had been in a space vacuum, the injury would likely not have occurred as there would not have been any pressure on his knee. As I have already noted, *Sonter* and *Johnson* both confirmed that where gravity affects the mass of the person lifting their own body weight, this can be attributed to gravity. Therefore, Mr Turnbull's injury was caused by gravity.

[76] Gravity created the body weight that caused the injury; therefore gravity and body weight equally caused the injury because in this case, they are one and the same thing. That is the innovation of *Sonter*.

[77] The Court determines that gravity is an external force and that it caused Mr Turnbull's injury under the 1992 Act.

Decision

[78] **Issue one:** After reviewing the mechanisms outlined by Mr Fosbender, Dr Murray, Mr Matheson and Mr Turnbull, the Court finds the two versions of accident event agreed, but counsel presented too brief a summary of them. It is apparent the mechanism of injury entailed the elements of twist, pop and flexing in the actions of squatting, lifting the body up and then flinging out the leg to extend the knee to force it straight.

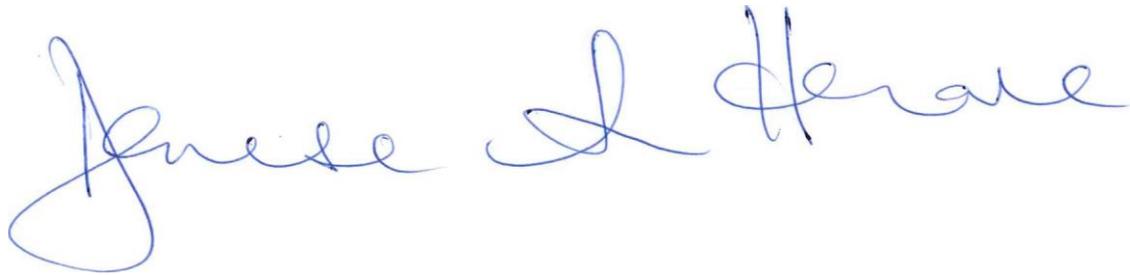
[79] **Issue two:** Gravity is an external force and that it caused Mr Turnbull's injury.

[80] The Court does not accept the line of cases which preceded the amendments to the definition of accident under the 2001 Act were wrongly decided or amounted to an error

remedied by amendments to the definition of accident. They were decided on their own facts.

[81] Accordingly, the appeal is allowed. The review decision dated 11 August 1999 is quashed, and the Corporation's decision is set aside.

[82] The appellant is entitled to costs, awarded on a 2B basis under the District Court Rules 2014.

A handwritten signature in blue ink, reading "Denese Henare". The signature is written in a cursive, flowing style with a large initial 'D'.

Judge Denese Henare
District Court Judge

Solicitors: Young Hunter, Christchurch for the respondent