

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2024] NZACC 020      ACR 130/23**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	AMY VAN WEY LOVATT
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing:      5 February 2024

Held at:      Wellington/Whanganui-a-Tara by AVL

Appearances:      The Appellant is self-represented  
H Evans for the Accident Compensation Corporation (“the  
Corporation”)

Judgment:      8 February 2024

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Code of ACC Claimants’ Rights - s 40; Appeals process - s 149(3);**  
**Decision – s 6(1), Accident Compensation Act 2001 (“the Act”)]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 15 June 2023. The Reviewer dismissed an application for review on the basis of lack of jurisdiction, finding that the Corporation’s letter of 18 November 2022 was not a reviewable decision under the Act.

**Background**

[2] From December 2019, Dr Van Wey Lovatt was diagnosed with a range of health issues. Dr Van Wey Lovatt claimed that the failure to diagnose her properly

led to a failure to provide appropriate treatments in a timely manner, consistent with treatment injuries.

[3] Between July 2020 and August 2021, Dr Van Wey Lovatt lodged eight treatment injury claims with the Corporation.

[4] On 10 October 2022, the Corporation issued eight decisions that declined to approve cover to Dr Van Wey Lovatt for her claimed treatment injuries. Dr Van Wey Lovatt applied for reviews of these decisions.

[5] Also on 10 October 2022, Dr Van Wey Lovatt emailed a complaint to the Corporation's "Customer feedback" email address stating:

Dear ACC Privacy Officer,

*RE: Formal complaint of breach of privacy*

I am writing to make a formal complaint of a breach of privacy. I understand that ACC review team will be assessing the merits of the decision-making by Ms Steele; however, I believe that ACC is also in breach of my privacy.

Privacy Act 2020 (section 22), states:

Information Privacy Principle 8

*Accuracy, etc, of personal information to be checked before use or disclosure*

An agency that holds personal information must not use or disclose that information without taking any steps that are, in the circumstances, reasonable to ensure that the information is accurate, up to date, complete, relevant, and not misleading.

In the medical assessments that I have been provided, all of the medical practitioners have commented on having not received all relevant information, or not being able to access the relevant information that ACC claims to have provided them. They have even remarked they cannot make an adequate assessment based on the information the[y] received. This would be for claims [claims are listed].

For the following claims, it appears that no assessment was made or that Ms Steele just failed to provide sufficient information for me, like the physicians in the forementioned claims [claims are listed].

I expect ACC to provide all relevant information to the assessors (IPP8).

I expect ACC to request for me additional health information which the assessor requires to make an informed decision in accordance with (IPP3).

I expect ACC to not make decisions on incomplete information (1PP8). However, this was not done.

Thus, under IPP7, I request that my assessor reports be amended to include all relevant health information and a new decision made based on complete and accurate information.

[6] Ms Lana Poihipi of the Corporation's Resolutions Services team member was allocated to investigate Dr Van Wey Lovatt's complaints. On 12 October 2022, Ms Poihipi deferred the investigation to Ms Christine Garner of the Corporation. Ms Poihipi characterized Dr Van Wey Lovatt's complaint as "regarding the services from Shelley Steele in relation to the decline for cover of various treatment injury claims". Ms Poihipi attached Dr Van Wey Lovatt's complaints, the evidence Dr Van Wey Lovatt had provided with those complaints, and summarized the issues. Ms Poihipi noted:

What is required now

Is it possible please to look into the complaints raised by Dr Lovatt to establish if Shelley failed to obtain the relevant information to make the cover decisions? Can input be sought from our Privacy team regarding this given Dr Lovatt's assertion her privacy has been breached because we failed to provide the assessor with all the relevant information and made the decisions without all relevant information.

Can contact please be made with Dr Lovatt to address the service issues mentioned above.

[7] Ms Garner responded as follows:

A lot of work has gone into the decision making of the claims that were declined. Mary Ahearn, Chery Gall, Megan Sellers and Mary Jo King being present whilst we discussed the decisions. I will meet again with MJ and Mary re the plan going forward.

[8] Dr Van Wey Lovatt did not receive the contact from the Corporation requested by Ms Poihipi, before receiving the reply from the Corporation regarding her complaints.

[9] On 18 November 2022, the Corporation emailed its reply to Dr Van Wey Lovatt regarding her complaints. The letter was headed "Response to formal complaint" and referred to "the complaints raised about the service from Ms Steele who issued the various treatment injury cover decline decisions these issues pertain

to". The letter provided comprised over six pages of responses in relation to the eight treatment injury claims made by Dr Van Wey Lovatt. The letter then concluded as follows:

It is evident the treatment injury claims lodged with ACC were complex, we couldn't grant cover because we were unable to obtain information to support your claims because it didn't exist, or the specialist opinions received didn't identify a physical injury.

Unfortunately, there appeared to be confusion around the need for you to complete a separate ACC6300 for each of the treatment injury claims. It was noted from the file and detailed in the above timeline you had been advised but I reiterate it here. To meet our privacy obligations ACC required your consent to obtain information regarding your claims. Hence the need for you to sign and return an ACC6300 for each of the treatment injury claims so we could obtain the claim specific information and make a cover decision. In the absence of this consent, we were not authorized to collect it.

What is clear is we haven't received your USA notes and this information is required if ACC was to revisit cover for the treatment injury decline decisions. Essentially if this information had been provided prior to the decisions issued the decisions would have been made factoring this information in.

Having assessed the available information ACC do not consider we have breached your privacy. You had asked under IPP7 we amend the assessors reports and issue new decisions. ACC acknowledges you have the right to correct information we hold. This can be done by submitting a statement of correction or statements of correction which can be uploaded to your respective claim files representing your views on what you consider inaccurate or misleading.

If you remain dissatisfied with ACC's response you have the option of raising these privacy concerns directly with the Office of the Privacy Commissioner on 0800 803 909 or email [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz)

Regarding the decisions, I understand you are currently engaged in the formal review process to dispute the cover decline decisions. This is the correct mechanism under Act. An independent reviewer will now decide on the available information if ACC made the correct decisions or not. Please forward any information you want ACC and the reviewer to consider.

[10] On 14 December 2022, Dr Van Wey Lovatt lodged an application to review the Corporation's letter of 18 November 2022.

[11] On 18 May 2023, review proceedings were held. Dr Van Wey Lovatt's submissions, as recorded by the Reviewer, included the following:

She stated quite clearly that her complaint was with respect to breaches of the Privacy Act (and hence the Code) and the Act.

This review addresses her overarching request that her cases be reviewed with respect to breaches of her privacy.

This review addresses the process by which ACC gathered (or failed to gather) the information required to decide her treatment injury claims, as required under the Act. This review comes under the Code.

This review focused on how ACC dealt with her, and its obligations under the Act, rather than with the specific outcomes of her treatment injury claims.

[12] On 15 June 2023, the Reviewer dismissed the review, for the following reasons. Dr Van Wey Lovatt's complaint to the Corporation's privacy officer did not make any reference to the Code, but referred to several alleged breaches of privacy principles. The Corporation therefore did not investigate whether there had been a breach of the Code of Claimants' Rights. The Corporation's letter of 18 November 2022 was not a decision under the Code, and so there was no jurisdiction to determine whether there had been a breach of the Code.

[13] On 10 July 2023, a Notice of Appeal was lodged by Dr Van Wey Lovatt.

## **Relevant law**

[14] Part 3 of the Accident Compensation Act 2001 (the Act) provides for a Code of ACC Claimants' Rights. Section 40 provides:

### **40 Purpose of Code**

(1) The purpose of the Code of ACC Claimants' Rights is to meet the reasonable expectations of claimants (including the highest practicable standard of service and fairness) about how the Corporation should deal with them, by—

- (a) conferring rights on claimants and imposing obligations on the Corporation in relation to how the Corporation should deal with claimants; and
- (b) providing for the procedure for lodging and dealing with complaints about breaches of the Code by the Corporation; and
- (c) providing—
  - (i) for the consequences of, and remedies for, a breach of the Code by the Corporation; and
  - (ii) without limiting subparagraph (i), how and to what extent the Corporation must address situations where its conduct is not consistent with or does not uphold the rights of claimants under the Code; and

- (d) explaining a claimant's right to a review, under Part 5, of a decision made under the Code about a claimant's complaint.
- (2) The rights and obligations in the Code—
  - (a) are in addition to any other rights claimants have and obligations the Corporation has under this Act, any other enactment, or the general law; and
  - (b) do not affect the entitlements and responsibilities of claimants under this Act, any other enactment, or the general law.

[15] Section 149 provides:

- (1) A claimant may appeal to the District Court against—
  - (a) a review decision; or
  - (b) a decision as to an award of costs and expenses under section 148.
- ...
- (3) However, neither a claimant nor the Corporation may appeal to the District Court against a review decision on a decision by the Corporation under the Code on a complaint by the claimant.

[16] Section 6(1) of the Act provides:

Decision or Corporation's decision includes all or any of the following decisions by the Corporation:

- (a) a decision whether or not a claimant has cover;
- (b) a decision about the classification of the personal injury a claimant has suffered (for example, a work-related personal injury or a motor vehicle injury);
- (c) a decision whether or not the Corporation will provide any entitlements to a claimant;
- (d) a decision about which entitlements the Corporation will provide to a claimant;
- (e) a decision relating to the level of any entitlements to be provided;
- (f) a decision relating to the levy payable by a particular levy payer;
- (g) a decision made under the Code about a claimant's complaint.

[17] In *Smith*,<sup>1</sup> Cadenhead DCJ held:

[19] In *Hawea v ACC* (High Court, Napier, CIV 2003- 441-607, 6 July 2004), Gendall J. referred to the definition of "decision" in s.6(1) of the 2001 Act, and stated, at paragraphs 17-18:

... The definition section is not exclusive.

To make a decision is to make up one's mind, to make a judgment, to come to a conclusion or resolution. Only when a decision has been made can there be a right of review and if no right of review exists then s133(5) has no application ... The substance [of the communication in question] has to be analysed.

[18] The Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants' Rights) Notice 2002, provides:

### **1.3: Spirit of Code**

This Code encourages positive relationships between ACC and claimants. For ACC to assist claimants, a partnership based on mutual trust, respect, understanding, and participation is critical. Claimants and ACC need to work together, especially in the rehabilitation process. This Code is about how ACC will work with claimants to make sure they receive the highest practicable standard of service and fairness.

### **1.4: Application of Code**

In all its dealings with claimants, ACC must ensure that its actions are consistent with, and uphold, the rights of claimants as provided for in this Code by applying the highest practicable standard of service and fairness. ...

#### **Part 2: Rights and obligations of this Code**

**Right 1** You have the right to be treated with dignity and respect.

- (a) We will treat you with dignity and respect.
- (b) We will treat you with honesty and courtesy.
- (c) We will recognise that you may be under physical, emotional, social, or financial strain.

**Right 2** You have the right to be treated fairly, and to have your views considered.

- (a) We will treat you fairly.
- (b) We will listen to you and consider your views.

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<sup>1</sup> *Smith v Accident Compensation Corporation* [2004] NZACC 305.

- (c) We will take into account, and be responsive to, any impairment you may have.

...

Right 5 You have the right to effective communication.

- (a) We will communicate with you openly, honestly, and effectively.
- (b) We will respond to your questions and requests in a timely manner.
- (c) We will provide you with an interpreter when necessary and reasonably practicable.
- (d) We will provide information in a form which you can access, and in a timely manner.

Right 6 You have the right to be fully informed.

- (a) We will provide information on how to make a claim for cover and entitlements.
- (b) We will keep you fully informed.
- (c) We will provide you with full and correct information about your claim, entitlements, obligations, and responsibilities.
- (d) We will inform you if your entitlements change.

Right 7 You have the right to have your privacy respected.

- (a) We will respect your privacy.
- (b) We will comply with all relevant legislation relating to privacy.
- (c) We will give you access to your information, in accordance with legislation.

...

Right 8 You have the right to complain.

- (a) We will work with you to address problems and concerns.
- (b) We will inform you about options available for resolving problems and concerns.
- (c) We will inform you about the complaints process, and the normal time frames for dealing with complaints.

Part 3: Addressing problems and concerns; and lodging and dealing with complaints ...



### **3.3: Procedure for lodging a complaint**

A complaint concerning this Code should be lodged with the complaints service. The complaints service is part of ACC, and will deal with, and make decisions on, these complaints. The complaints service will act in a fair and impartial manner, taking the evidence, and the claimant's and ACC's views into consideration.

A complaint can be lodged with the complaints service at any time, regardless of whether the claimant previously raised a problem or concern with the person the claimant is dealing with at ACC, or that person's manager.

The claimant may complain orally or in writing.

ACC may decline to investigate where a complaint is correctly dealt with by another agency, such as the Health and Disability Commissioner. In these circumstances, ACC will advise the claimant of appropriate agencies that may be able to assist.

Any dispute about cover and entitlements, including treatment and compensation, is not covered by this Code, and continues to be addressed by mechanisms under the Act.

### **3.4: Procedure for dealing with a complaint**

The complaints service will—

- (a) acknowledge receipt of the complaint in writing; and
- (b) advise the claimant about the complaints process and normal time frames for dealing with the complaint; and
- (c) comply with all of the other relevant rights in this Code when dealing with complaints; and
- (d) investigate the complaint; and
- (e) advise the claimant of any issues, such as entitlements, that are not matters for this Code and advise who the claimant should contact to seek resolution of these issues.

## **Discussion**

[19] The issues in this case are whether the Reviewer correctly declined jurisdiction in relation to the Corporation's letter of 18 November 2022, and whether this Court has jurisdiction to consider Dr Van Wey Lovatt's appeal.

[20] Mr Evans, for the Corporation, submits as follows. There was no reference to the Code in Dr Van Wey Lovatt's letter of 10 October 2022. As a result, the Corporation did not carry out an investigation under the Code, and there was no

reason for it to do so. If the letter did constitute a valid Code complaint, section 149(3) of the Act provides that there is no right of appeal to the District Court about a Code complaint. The Corporation's letter of 18 November did not constitute a decision on Dr Van Wey Lovatt's claim, as it was administrative in nature.

***Whether Dr Van Wey Lovatt's letter was a complaint under the Code, giving rise to jurisdiction at review***

[21] The Reviewer, in the decision of 15 June 2023, noted that Dr Van Wey Lovatt's complaint to the Corporation's privacy officer did not make any reference to the Code, but referred to several alleged breaches of privacy principles. The Reviewer therefore concluded that the Corporation's decision of 18 November 2022 was not a decision under the Code, and so the Reviewer had no jurisdiction to determine whether there had been a breach of the Code.

[22] This Court acknowledges that Dr Van Wey Lovatt's letter did not make any explicit reference to the Code. However, this Court makes the following findings:

[23] First, Dr Van Wey Lovatt's letter complied with the process for lodging a complaint under the Code. Her letter was emailed to the Corporation's "Customer feedback" email address. This is the email address provided by the Corporation for its complaints service. Paragraph 3.3 of the Code provides that a complaint concerning the Code should be lodged with the complaints service.

[24] Second, Dr Van Wey Lovatt's letter raised matters which were encompassed within the rights provided by the Code. The letter was addressed as a formal complaint of a breach of privacy. The letter also alleged that: medical practitioners had commented on having not received all relevant information, or not being able to access the relevant information that the Corporation claimed to have provided them; for certain claims, no assessment was made or the Corporation failed to provide sufficient information for her; and the Corporation had made decisions on incomplete and inaccurate information. Section 40(1) of the Act provides that the purpose of the Code of ACC Claimants' Rights is to meet the reasonable expectations of claimants (including the highest practicable standard of service and

fairness) about how the Corporation should deal with them. Part 2 of the Code provides, *inter alia*, that claimants have:

- (a) the right to be treated with dignity and respect;
- (b) the right to be treated fairly and to have their views considered;
- (c) the right to effective communication, including information in a form which can be accessed;
- (d) the right to be fully informed, including full and correct information about claim/s made;
- (e) the right to have their privacy respected, including compliance with all relevant legislation and access to information; and
- (f) the right to complain, involving working with the Corporation to address problems and concerns, information about options available for resolving problems and concerns, and information about the complaints process and the normal time frames for dealing with complaints.

[25] Third, the nature of Dr Van Wey Lovatt's complaint was initially recognised by an employee of the Corporation as one regarding the services from the Corporation in relation to the decline for cover of injury claims. Ms Poihipi of the Corporation outlined Dr Van Wey's Lovatt's complaints and asked that contact be made by the Corporation with Dr Van Wey Lovatt to address the service issues outlined (which contact did not eventuate). Service-related issues are clearly encompassed within the legislative provisions relating to the Code (outlined above), and paragraph 3.4 of the Code requires follow-up contact by the Corporation with the claimant.

[26] Fourth, it is within the spirit of the Code that the Corporation could reasonably be expected to have addressed Dr Van Wey Lovatt's letter as a complaint under the Code, or at least clarified with her whether it should do so. Paragraph 1.3 of the Code provides that: it encourages positive relationships between the Corporation and claimants; there is a partnership based on mutual trust, respect, understanding, and

participation is critical; claimants and the Corporation need to work together; and the Code is about how the Corporation will work with claimants to make sure they receive the highest practicable standard of service and fairness.

[27] In light of the above, this Court finds that Dr Van Wey Lovatt's letter constituted a complaint under the Code, and that the Reviewer had jurisdiction to hear and decide upon the review.

***Whether this Court has jurisdiction to hear Dr Van Wey Lovatt's appeal***

[28] Section 149(3) of the Act provides that a claimant may not appeal to the District Court against a review decision on a decision by the Corporation under the Code on a complaint by a claimant.

[29] It is accepted by the Corporation that it did not treat or investigate Dr Van Wey Lovatt's letter as a complaint under the Code, and therefore did not issue a decision on this basis. The bar to this Court's jurisdiction under section 149(3) requires a decision by the Corporation under the Code on a complaint by a claimant. In that the Corporation did not issue a decision under the Code, the bar on jurisdiction does not apply to Dr Van Wey Lovatt's appeal. Dr Van Wey Lovatt was therefore entitled to file an appeal against the Reviewer's decision.

[30] Section 6(1) defines a Corporation's decision as including a decision whether or not a claimant has cover. A decision under the Act has been defined as to make up one's mind or make a judgment.<sup>2</sup> This Court finds that the Corporation, in its letter of 18 November 2022, made more than an administrative decision. The Corporation made up its mind and made a judgment to decline Dr Van Wey Lovatt's privacy concerns in relation to cover for the treatment injuries that she claimed.

**Conclusion**

[31] In light of the above considerations, the Court finds that Dr Van Wey Lovatt's letter of 10 October 2022 constitutes a complaint by her under the Code, which was

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<sup>2</sup> *Smith*, above note 1, at [19].

not addressed as such by the Corporation, and that this Court has jurisdiction over her appeal.

[32] For the above reasons, the appeal is allowed, and the review decision of 15 June 2023 is set aside. In terms of section 161(2)(b) of the Act, the Court requires the Corporation to take the following action within 20 working days after the release of this decision:

- (a) investigate and decide on Dr Van Wey Lovatt's letter of 10 October 2022 as a complaint under the Code;
- (b) adopt the procedures outlined in the Code, in accordance with the spirit and provisions of the Code, including convening a meeting with Dr Van Wey Lovatt by audio-visual means to allow her to explain in a concise and considered fashion the nature of her complaints and the outcomes that she reasonably seeks.

[33] Dr Van Wey Lovatt may be entitled to reasonable disbursements in relation to this appeal. If these cannot be agreed within one month, I shall determine the issue following the filing of memoranda.

A handwritten signature in dark ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller  
District Court Judge