**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 241 ACR 38/22**

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| UNDER | THE ACCIDENT COMPENSATION ACT 2001 |
| IN THE MATTER OF | AN APPEAL UNDER SECTION 149 OF THE ACT |
| BETWEEN | CW<br>Appellant |
| AND | ACCIDENT COMPENSATION CORPORATION<br>Respondent |

Hearing: 2 December 2022
Held at: Wellington/Te Whanganui-a-Tara by AVL

Appearances: B Hinchcliff for the Appellant
F Becroft for the Respondent

Judgment: 12 December 2022

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**
**[Claim for mental injury - s 26(1)(c), Accident Compensation Act 2001]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 22 February 2022. The Reviewer dismissed an application for review of the Corporation's decision dated 10 May 2021 declining cover for a mental injury caused by treatment.

**Background**

[2] The appellant was born in 1959.

[3] On 14 May 1977, the appellant slipped down some steps and injured her back. On 30 May 1977, she returned to normal duties.

[4] On 6 April 1980, Dr B R Cross wrote to the Accident Compensation Commission advising that the appellant had consulted him regarding pain in her neck and lower back. X-rays revealed a normal cervical spine and a congenitally abnormal lumbar spine.

[5] On 30 July 1980, the appellant presented to Dr Kenneth Orr, Musculoskeletal Physician, with low back pain, and she was treated with manual therapy.

[6] On 14 August 1980, Dr Orr administered a spinal injection of xylocaine and ethanolamide into the appellant's L5/S1 interspinous/supraspinous ligament for back pain.

[7] The appellant later lodged a claim in respect of back pain due to injury. On 13 October 1980, the Commission declined the claim as it was unable to accept that the discomfort could be related to the 1977 incident.

[8] Subsequently, the appellant lodged a claim for Post Traumatic Stress Disorder, citing a date of injury as 14 September 1993, and cover was granted.

[9] On 1 April 2010, an MRI was performed on the appellant's cervical spine. Dr John Wilson, Radiologist, reported disc and facet joint disease with possible compression of the left L3 nerve root in its foramen.

[10] On 20 April 2010, Mr Andrew Law, Consultant Neurosurgeon, assessed that the appellant showed degenerative changes throughout her cervical and lumbar spine, but there was no particular lesion against which surgery would be effective.

[11] On 9 August 2010, the appellant presented to her GP, Dr Siobhan Latham, complaining of ongoing problems with her nervous system since her injection in 1980.

[12] On 27 September 2010, Dr Ian Rosemergy, Neurology Registrar, found that it was not immediately apparent what the presenting problem was. He noted that the appellant's recent blood tests were normal, and that a recent MRI was essentially normal apart from some impingement on the L3 nerve root.

[13] On 29 September 2010, a treatment injury claim form was completed by Dr Latham, referring to a spinal injection for the appellant's back pain. The injury was described as "SJ spinal cord injury (due to miscalculation of position of spinal cord due to spina bifida occulta)".

[14] On 11 October 2010, an EEG was performed. Dr Peter Bergin, Neurologist, advised that there was a moderate abnormality comprising slow wave abnormalities in the left mid temporal region; there was no epileptiform discharges; and the slow wave abnormality was non-specific and could indicate a structural abnormality.

[15] On 9 November 2010, Dr Orr outlined at length his response to the claim of treatment injury. He concluded that there was no way her present problems could be related to the treatment of a nasty injury which she suffered thirty years before.

[16] On 15 December 2010, the Corporation declined the claim, and the report attached to this decision noted:

> Dr Orr provided a report to ACC along with contemporaneous notes he made in 1980 when he saw and treated [the appellant]. ACC notes his current report summarises his treatment and effects of it which is consistent with the notes of 1980.
>
> In summary [the appellant] actually first saw him in 1980 for back pain. Dr Orr reviewed the x-rays before providing treatment and noted a congenital segmentation anomaly as reported by the radiologist. He did not find any signs of spina bifida occulta. He explained the congenital anomaly could not cause pain and he considered her problem at the time was "a gross dysfunction of the zygapophyseal joints at L5/S, with several tenderness of the interspinous supraspinous ligament, immobility of that segment, and surrounding muscle spasm." [The appellant's] symptoms disappeared after a manipulation on 30 July 1980. However [the appellant] revisited her after 2 weeks as her symptoms had returned, after bending over against instructions. At this time, Dr Orr gave her another manipulation and then proceeded to give a sclerosant injection into the L5/S interspinous/supraspinous ligament. The material injected was .5 mls Ethanolamine Oleate in 1 ml of 1% xylocaine. Dr Orr reported [the appellant] experienced a faint following the injection due to hypotension.

> Dr Orr saw her again on 8 September 1980 and 29 September 1980 and noted her feeling good with no headache and occasional back ache.
>
> The notes of file show that [the appellant] has undergone investigations under Neurosurgery and Neurology teams at Auckland Hospital for her spinal pain problem. Mr Andrew Law, Consultant Neurosurgeon found it hard to define her rather diffuse pain and organised an MRI scan which she had in April 2010. …
>
> For ACC to accept a treatment injury claim for cover, there must have been clinical evidence of a physical injury caused by treatment which can then be assessed against the remaining criteria for treatment injury, for example, whether the injury is an ordinary consequence of treatment.
>
> While spinal cord damage can be regarded as a physical injury, ACC has noted Mr Orr's interpretation of the MRI of the spine and does not consider the MRI provides sufficient evidence to support this diagnosis as claimed.
>
> There are degenerative changes throughout [the appellant's] cervical and lumbar spine and several physical injuries in relation to the spine can be identified based on the MRI findings. These changes are reported to involve as far as the fourth lumbar spine vertebrae. ACC notes the injection was given at L5/S level. While it is claimed that there is miscalculation of the injection site due to spina bifida occulta, ACC is unable to find any evidence on file to support this point and moreover [the appellant] does not have this condition. ACC is therefore unable to causally link a single injection given at one site to the extensive degenerative changes in the cervical and lumbar spines noted 30 years later.

[17] In 2011, the appellant lodged a late review application against the 2010 treatment injury decline. On 29 February 2012, the Reviewer dismissed the review on the basis that there was no compelling evidence to support her case.

[18] On 3 November 2012, Dr Karl Jansen, Consultant Psychiatrist, attended the appellant at her home, where she had been seen shouting and screaming about devils and her dead mother. Dr Jansen noted:

> The police showed me documents in her house that indicated that [the appellant] has a very longstanding belief that she has multiple problems that she attributes to a pain-relieving injection given by Dr Orr into her spine in 1980. She attributes current all-over body pain, dizziness, shortness of breath and other issues to this event. …
>
> It was established that [the appellant's] belief that she has spina bifida occulata (SFO) and that as a result Dr Orr hit the wrong spot causing all sorts of neural damage is without foundation. Her spinal cord appears to be normal, but she does have some degenerative changes in her body spine. …
>
> It is clear from the letters that she reacted to the rejection of her ACC claim by developing a belief that there had been a vast conspiracy involving ACC,

> Dr Orr and multiple specialists currently … and general 'corruption' in the country. …
>
> Impression
>
> Psychosis NOS, probably schizophrenia of longstanding. It seems that this may have once looked more like a somoatoform disorder with overvalued ideas and a compensation neurosis, and that this morphed into delusional disorder that is now presenting as more schizophrenia-like, with hallucinations of spirits etc.

[19] On 5 December 2012, Dr Jeremy Whiting, Consultant, who also examined the appellant, reported a diagnosis of a brief psychotic episode (drug induced), chronic somatisation disorder, and paranoid personality traits.

[20] On 27 April 2016, the appellant presented to assessors at the local District Health Board Mental Health Services. The assessors noted that she reported a conspiracy in the health system since she had a needle put in her back 37 years ago by a doctor who caused her significant problems (even though the history is of spina bifida occulta). The assessors diagnosed a mixed cluster of personality traits, predominantly schitzotypal, plus histrionic plus paranoid, delusional disorder and schizophrenia.

[21] On 19 June 2016, the appellant again presented to assessors at the local District Health Board Mental Health Services. The assessors noted the same report of a conspiracy since she had a needle put in her back by a doctor, leading to issues with her brain. The assessors diagnosed paranoid personality traits, and/or delusional disorder, and possible schitzotypal traits underlying.

[22] On 9 January 2019, an injury claim form was filed by Dr Anna Harvey, GP, for post-traumatic brain syndrome said to be as a result of an accident on 14 August 1980, when the appellant received a spinal injection for back pain.

[23] On 7 March 2019 the Corporation declined the claim advising:

> This claim was lodged to consider possible mental injury of post-traumatic stress disorder ("PTSD") as a result of treatment. To further clarify the areas for investigation we sought information from your Advocate, Dr Hinchcliff in January 2019. Unfortunately we have not heard from Dr Hinchcliff so we are unable to further investigate your claim at this time. As such we are unable to determine that you have a mental injury caused by treatment and this claim is respectfully declined. We note that you already have cover for post-traumatic

> stress disorder under claim A1062347005. You may consider requesting entitlements through that claim.

[24] On 27 March 2019 Mr Hinchcliff applied for a review of the Corporation's decision.

[25] On 25 July 2019, Dr Andrew Snell and Dr Christopher Walls, Occupational Medicine Specialists, provided a report which detailed the injection in 1980 as well as the pain that the appellant recalled afterwards. She had been unable to resume full-time employment because of the symptoms that she had suffered afterwards, symptoms that had been diagnosed as PTSD and depression. Doctors Snell and Walls proposed the appellant had suffered a medical misadventure leading to the development of arachnoiditis. The Doctors said that additional symptoms in the following years may represent a functional neurological disorder or post-traumatic stress disorder, but this had yet to be formally established and she would have to be assessed by a psychiatrist to confirm these diagnoses.

[26] On 5 September 2019, Dr Peter Jansen, Principal Clinical Advisor, responded to Dr Walls' evidence, concluding that:

> The report from Drs Snell and Walls is speculative, and does not line up with the facts available. Prolotherapy as practised by Dr Orr was highly unlikely to lead to inadvertent injection into or close to the spinal cord - the pain of an injection could cause a faint, but the many layers of bone, ligaments and connective tissues makes it extremely unlikely that the sclerosant was near to the spinal cord or arachnoid mater. The pattern of changes on imaging does not fit with arachnoiditis from a chemical reaction.

[27] On 5 and 23 March 2020, review proceedings were conducted. On 6 April 2020, the Reviewer quashed the Corporation's decision. The Reviewer was satisfied that the appellant sustained a physical injury when she received the injection, and found that the Corporation needed to consider whether that physical injury materially contributed to the diagnosis of post-traumatic brain syndrome. The Reviewer directed the Corporation:

> … to engage an appropriate Specialist for the purpose of assessing whether the Applicant's physical injury caused by Dr Orr's injection materially contributed to a possible diagnosis of Post-Traumatic Brain Syndrome as indicated by Dr Harvey. At the time of engaging a specialist, ACC is directed to ensure all medical relevant reports and other information (including details of the existing

> covered mental injury PTSD) are made available. In addition, a copy of this decision should be provided.

[28] On 6 June 2020, Mr Hinchcliff filed a review application claiming an unreasonable delay in complying with the review decision of 6 April 2020.

[29] The Corporation was in the meantime seeking further notes in relation to the appellant's mental health. The Corporation received notes from the local Health Board's Clinical Record Department on 6 July 2020, which included mental health notes from 2012. Further notes were also provided in September 2020.

[30] On 19 June 2020, the Corporation sought permission from Mr Hinchcliff to access historical mental health records and notes relating to the appellant's claim. The Corporation also asked Mr Hinclcliff to provide a list of at least three preferred psychiatrists for the assessment, and the Corporation would check their availability

[31] Later, on 19 June 2020, Mr Hinchcliff advised the Corporation that the appellant gave her permission for the Corporation to access all her medical information related to her PTSD condition. Mr Hinclliff asked that the Corporation only use Psychiatrists, Dr Isichei, Dr Cunningham, Dr Pavagada or Dr Gil Newburn.

[32] Subsequently, the appellant made her own appointment with Dr Newburn, scheduled for December 2020.

[33] On 29 September 2020, the Corporation advised Mr Hinchcliff that Dr Newburn did not have a contract to provide psychiatric services to the Corporation, and so the Corporation would instead be arranging an assessment with Dr Joseph Foote. Mr Hinchcliff asked the Corporation to forego that appointment and advised that the appellant would see Dr Newburn instead.

[34] On 1 October 2020, the Corporation explained that the Reviewer's directions were for it to arrange a suitable assessment, and that Dr Newburn was not a contracted provider. It then confirmed that an appointment could be booked with either Dr Foote or Dr Isichei (one of the providers the appellant had previously agreed to see). Mr Hinchcliff maintained that Dr Newburn was a suitable provider

and suggested that the Corporation could send the appellant to another provider afterwards, if necessary. The parties were unable to agree on this point, and ultimately the appellant refused to be seen by anyone other than Dr Newburn.

[35] On 11 February 2021, Dr Newburn provided a report diagnosing adjustment disorder and somatic symptom disorder ("SSD") relating to the treatment. He advised:

> [The appellant] suffered an unfortunate and abnormal pathological response to a treatment in August 1980. Having been functioning well in life prior to this, there was a stepwise change in her ability to manage. Symptoms have continued to the present, with exacerbations arising from a further treatment issue in 2008. She continued to present with two Axis 1 DSM diagnoses consequent on this original injuring event. The changes in her life are not only described by her, in the current assessment and through other assessments, but also by her father.
>
> This specific origins of the pain remain unclear however, the experiences are very real for her, and remains the prominent focus in her life.
>
> It is clear that some significant event occurred on the 14 August 1980. While prior symptoms have occurred in relation to pain, these had not in any way appeared to impact on her engaging in the normal activities of life. She was able to work, engage in recreational activities, and in relationships. Therefore, her function changed in a stepwise fashion following this event. It is impossible to give a clear diagnosis of what occurred at that time, forty years after the injuring event. This may have been a simple, albeit prolonged, faint due to xylocaine injection as suggested by Dr Orr. There is unfortunately no description of whether with her collapse she fell and struck her head, or whether some other event occurred. However, it would be unusual with a simple faint to have an altered level of consciousness such that she was not aware of most of the drive home, although she clearly was able to function automatically and get there. It is interesting however that she had remained in first gear as described by her father at the time. This is certainly not the history that one would expect following a simple faint. It is important also in this regard that there does not seem to have been any prior history of abnormal psychological reactions to injuring events. Rather, she presented symptoms as they were, but seems to have got on with things otherwise. Since the injuring event, there has been a maintained change, and loss of function.
>
> It is therefore clear that she has sustained a treatment injury, with the physical event of an injection leading to at the very least an alteration in blood pressure, again a physical process, with a resultant loss of function following this.
>
> It is equally clear that she continues to present with two Axis I diagnoses consequent upon this, and therefore has sustained mental injuries consequent upon the treatment event.

[36] On 27 April 2021, Mr Jake Dickson, Psychology Advisor, completed a file review and advised against accepting the claim. He noted significant oversights in

Dr Newburn's report, and concluded that it was not a comprehensive mental injury report:

> A TIMI [treatment injury mental injury] assessment report was received (Dr Newburn). This report described the index event (response to a 'therapeutic injection' ?20/09/1979 or 30/07/1980). Initial difficulties identified included fatigue, headache, and pain and appetite changes. Current symptoms identified included anxiety around medical appointments, pain, avoidance, fatigue, and cognitive issues.
>
> An adjustment disorder (prolonged, unspecified) was diagnosed, perpetuated by ongoing pain. Somatic symptom disorder ('with prominent pain') was also diagnosed. Both psychiatric diagnoses were linked to the index event; with a described significant change in functioning after this event.
>
> Received notes identified widespread/diffuse pain (24/04/2010, Dr Law), unusual symptoms following osteopathy input (noted in clinic letter 30/09/2020, Dr Rosemergy), '3 times nearly died due to medication', multiple variable symptoms (e.g., 'problems from her stomach, seizure things, brain feels funny', and mental health symptoms), and that GP information from the time of the injection but that these 'do not refer to or contain any information about the spinal injection' (GP consult 09/08/2010).
>
> A report from Dr Orr (09/11/2010) noted that [the appellant] 'could not bend and could not walk' following an event in January 1980 (?prior to the injection), 'a fainting of some severity of the type that we observe on about a weekly basis' during the event in question, care provided during the event, apparent improvement in pain following the event (and was 'essentially symptom free' 29/09/1980 and/or following each appointment after the event) and significant differences between the clinician's and patient's post event recall/documentation of the event.
>
> A mental health service letter 03/05/2016 noted '[the appellant] has voiced some bizarre thought content and conspiracies to do with medical procedures she has had in the past, she also spoke of her religious beliefs and her spiritual experiences in which she believes she sees Jesus, receives messages from God and believes she has been put on earth by God for a purpose but will not disclose what this is, only stating the 'world will not know what has hit them when this comes out'. Financial concerns were also noted. similar and significant (non-pain/adjustment) psychological issues (psychosis/delusional thought) also appear noted in psychiatric evaluation 14/11/2012 (Owen Martin), with 'longstanding paranoid personality d/o, ?somatoform d/o' noted.
>
> Psychiatric review 03/11/2012 (Dr Jansen) noted an impression of 'psychosis NOS, probably schizophrenia it seems this may have once looked more like a somatoform disorder with overvalued ideas and a compensation neurosis, and that this is morphed into a delusional disorder that is now presenting as more schizophrenia-like, with hallucinations of spirits etc'.
>
> I am unable to find GP notes from 1980 cited in Dr Newburn's report. MI cover for PTSD and a depressive disorder appears on eos under claim A1062347005.

> The current question for PA is 'does the specialist report from Dr Newburn provide logical clinical rationale for his opinion/diagnosis? If not - please explain (providing clinical reasoning) why not'.
>
> Conclusion
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> 1. The report would appear based almost entirely on the client's self-report. However, significant concerns are evident regarding validity/consistency of self-report, and significant mental health issues are identified in reviewed documentation. If this information was not available to the assessor (and some does not appear cited in the report); the formation of such firm conclusions made on limited information is of clinical concern. Overall, there appear significant clinical concerns regarding the report and is it not considered a valid, comprehensive assessment.
>
> 2. Again, it is recommended that any extant information is requested, and a MI assessment is conducted by an experienced psychiatric MI assessor who is aware of the standards of reporting, familiar with requirements for ACC reporting, and need for clear evidence for conclusions.

[37] On 14 April 2021, the unreasonable delay review proceeded. On 5 May 2021, the Reviewer dismissed the review on the basis of lack of jurisdiction under section 134 of the Act. The Reviewer noted that the Corporation had not issued a decision on cover, and an applicant cannot seek a review on the basis that there has been an unreasonable delay in processing a claim for an entitlement

[38] On 10 May 2021 the Corporation issued a decision, again declining the appellant's claim for cover due to her injury on 14 August 1980. The decision letter reads:

> Based on the information we have received including the assessment report from Dr Gil Newburn, there isn't sufficient evidence to show your mental injury was caused by your physical injury suffered on 14/8/1980. ACC have been unable to determine a causal link between the treatment and the claimed mental injury. Unfortunately, this means that we are unable to provide cover for your claim, and we aren't able to help with the cost of treatment or other support for your mental injury.

[39] A review application was filed against that decision.

[40] On 9 December 2021, Dr Newburn provided a further report, responding to questions put to him by the Corporation. Dr Newburn advised that his new report did not alter anything set out in the earlier report, but he considered the appellant's sensitive claim, and ruled out premorbid PTSD as being associated with the current presentation. Dr Newburn advised that it was more probable than not that the

appellant's current presentation remained a clear and consistent consequence of the injuring event in 1980, further exacerbated by the injuring event in 2008.

[41] The Corporation was not satisfied with the response and requested a peer review, but this was also declined by the appellant.

[42] On 28 January 2022, review proceedings were held. On 22 February 2022, the Reviewer dismissed the review, on the basis that there was not sufficient available evidence to show that the appellant's mental injury was caused by a physical injury suffered on 14 August 1980.

[43] On 28 March 2022, a Notice of Appeal was lodged.

[44] On 2 August 2022, the appellant was referred by Ms Michelle Glauser, of a local Medical Centre, to the District Health Board's Outpatients' Unit. The reason for the referral was that she has a polysomatisation disorder, body dysmorphic disorder and generalised anxiety disorder with multiple system complaints impairing her mobility. These included palpitations, nausea, dizziness, feeling of being disconnected and chronic pain. She had not showered for six weeks. The Unit noted that she was not interested in receiving further medical intervention due to alleged previous treatment injuries and lack of trust in the medical field.

**Relevant law**

[45] Section 26(1)(c) of the Accident Compensation Act 2001 ("the Act') defines personal injury as including mental injury suffered by a person because of physical injuries suffered by the person. Section 27 defines a mental injury as a clinically significant behavioural, cognitive or psychological dysfunction.

[46] Section 55(1)(d) provides that a person who lodges a claim for cover and entitlement must, when reasonably required to do so by the Corporation, undergo a medical assessment by a registered health professional specified by the Corporation, at the Corporation's expense.

[47] In *W*,[1] Collins J, in discussing the proper ambit and meaning of "because of" in section 26(l)(c) of the Act, stated:

> [76] In summary, the answer to the first question posed in [5] is that the ambit and meaning of the words "because of" in s 26(1)(c) of the Act depends on the context in which the claim for cover is made. In most cases, s 26(1)(c) of the Act will require that the claimant's physical injuries are both a factual and legal cause of his or her mental injuries. These requirements will usually be satisfied where two tests are met. First, subject to the possible exceptions outlined in [63], the "but for" test must be satisfied. Second, the physical injury must "materially contribute" to the claimant's mental injury.

**Discussion**

[48] The issue in this case is whether there is sufficient evidence, on a balance of probabilities, that the appellant has suffered mental injury as a result of a physical injury suffered in treatment (a spinal injection) received in August 1980. In terms of section 26(1)(c) of the Act, the appellant must establish that she suffered mental injury because of a physical injury. This means that, in principle, she must establish that, but for her physical injury by treatment of Dr Orr in 1980, she would not have her mental injury of post-traumatic stress disorder (PTSD), and that her physical injury materially contributed to her disorder.[2]

[49] Mr Hinchcliff, for the appellant, submits as follows. The evidence supports that the appellant suffers from a mental injury caused or contributed to by treatment in 1980. There is no evidence that she suffered from a mental injury before the treatment. The interaction between the sensitive claim and the mental injury due to treatment has been answered by Dr Newburn. He assessed that it was more probable than not that the appellant's current presentation remained a clear and consistent consequence of the injuring event in 1980. It is not reasonable for the Corporation to demand that the appellant have an in-person assessment with a psychiatrist. The Corporation could have requested an opinion from a specialist on the papers at any time.

[50] The Court acknowledges the above submissions. The Court notes also the following evidence.

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1 *W v Accident Compensation Corporation* [2018] NZHC 937, [2018] 3 NZLR 859, [2018] NZAR 829.

(a) The appellant's claim for PTSD was lodged in January 2019, over 38 years after she received a spinal injection administered by Dr Orr.

(b) On 3 November 2012, Dr Jansen, Consultant Psychiatrist, attended the appellant at her home. Dr Jansen noted that the appellant had a very longstanding belief that she had multiple problems that she attributed to a pain-relieving injection given by Dr Orr into her spine in 1980. Dr Orr recorded that it was established that the appellant's belief that she had *spina bifida occulata* and that as a result Dr Orr hit the wrong spot, causing all sorts of neural damage, was without foundation. Dr Jansen found that her spinal cord appeared to be normal, but she had some degenerative changes in her body spine. Dr Jansen diagnosed psychosis (not otherwise specified), probably schizophrenia of long standing, of the nature of delusional disorder.

(c) On 27 April and 19 June 2016, the appellant presented to assessors at her local District Health Board Mental Health Services. The assessors noted that she reported a conspiracy in the health system since she had a needle put in her back 37 years before by a doctor who caused her significant problems (even though the history was of *spina bifida occulta*). The assessors diagnosed a mixed cluster of personality traits, including schitzotypal and delusional disorder.

(d) On 6 April 2020, a Reviewer, having conducted a review to consider the appellant's claim, directed as follows. The Corporation was to engage an appropriate specialist for the purpose of assessing whether the appellant's physical injury caused by Dr Orr's injection materially contributed to a possible diagnosis of PTSD. The Corporation was to ensure that, at the time of engaging a specialist, all medical relevant reports and other information were made available. In addition, a copy of the Reviewer's decision (which included consideration of the reports of 2012 and 2016) should be provided.

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[2] *W,* note 1, above, at [76].

(e) It appears that the Corporation duly made available the relevant medical reports and other information. The Corporation also liaised with Mr Hinchcliff, the appellant's advocate, about the engagement of an appropriate specialist. On 19 June 2022, Mr Hinchcliff gave permission for the Corporation to access all the appellant's medical information related to her PTSD condition, and provided the names of three psychiatrists from whom the assessor was to be chosen. The Corporation objected to a referral to one of the named psychiatrists, Dr Newburn, but agreed to the appointment of another of the psychiatrists listed. However, the appellant went ahead and arranged an appointment with Dr Newburn.

(f) Dr Newburn's ensuing reports were based primarily on the the appellant's self-reported evidence. The reports contained no mention of the mental health reports of 2012 and 2016 (noted above), which made specific reference to her claims about the 1980 injury, and which provided a mental assessment of her at the time.

[51] The Court concludes from the above evidence that the appellant has not established on a balance of probabilities, through Dr Newburn's report, that her physical injury, caused by Dr Orr's injection, materially contributed to a diagnosis of PTSD. Despite the clear directions of the Reviewer, not all relevant medical evidence was considered by Dr Newburn in his assessment. The Court does not accept that it is appropriate that the Corporation could have directed that further psychiatric assessment be done on the papers. The appellant's claim, dating back many years, and covering complex mental issues, needs to be assessed through an examination of the appellant by an appropriate specialist.

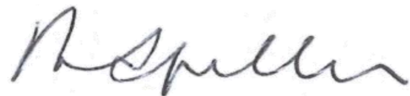
**Conclusion**

[52] In light of the above considerations, the Court finds that there is not sufficient evidence, on a balance of probabilities, that the appellant has suffered mental injury as a result of a physical injury suffered in treatment (a spinal injection) received in August 1980. The decision of the Reviewer dated 22 February 2022 is therefore upheld.

[53] This appeal is dismissed.

[54] The Court notes, however, the offer of the Corporation for a further mental injury assessment to be undertaken, and commends this offer to the appellant for her consideration.

[55] I make no order as to costs.



P R Spiller
District Court Judge

Solicitors for the Respondent: Medico Law.