

**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 178 ACR 113/21

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

Hearing: 1 September 2022

Heard at: Wellington/Te Whanganui-a-Tara

Appearances: Mr A Beck for the applicant (via AVL)
 Mr J Coates for the respondent

Judgment: 19 September 2022

**RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Work Related Mental Injury - Section 21B(1)(b)
Accident Compensation Act 2001]**

[1] The issue in this appeal is whether ACC was correct in its decision dated 8 October 2020 to decline cover for a work-related mental injury following the appellant witnessing her older son molesting her younger son in their home.

Background

[2] The appellant's older son was sexually abused by a male relative. Following this, he began to act out inappropriate sexual behaviours. He then began to molest the appellant's younger son.

[3] In 1996, the appellant had a business that traded as a registered company importing and distributing products. She was a shareholder employee in that business.

[4] Also, in 1996, the appellant was working in that business at home. She witnessed a sexual assault by her older son on her younger son. In 2020 she described it as follows:

I was on the phone talking to a customer. I went to look for my younger son. I always kept him in sight for his supervision and safety from his sexually reactive older brother. I found him being assaulted by his older brother. He did not shout for help. I knew he was fully sexualised at this point. I became totally overwhelmed with fear and anger towards my elder son. I was afraid I was going to harm him.

[5] In a report from the Victoria Clinic Hamilton, dated 30 April 2012, is this:

1993-1998: one son molested the other son multiple occasions

Went into institutional care and was molested in care and by some of the professionals in his life. In 1997, consequent to an increasing depression in her husband, [the appellant] was subjected to months of anxiety and fear, as he cleaned guns, stopped talking to the family, gambled, and intimidated her by suddenly appearing as she went about her daily life. This ended in an armed offenders squad call out and a protection order against him.

[6] The appellant also reported repeated sexual and other abuse her two children were subjected to since 1991.

[7] In a letter to ACC dated 7 May 2019, the appellant referred to "repeated rape and abuse [her elder son] has suffered at the hands of ACC approved providers" and that she "had to witness daily assaults on [my younger son] from 1993 while ACC accepted his claim".

[8] On 8 October 2004, the appellant was diagnosed with a major depressive episode with the Victoria Clinic notes recording:

Disorganised, tearful, and highly distressed.

In essence – multiple stressors – last seven years including loss of health to counsel, marriage split, [older son's] abuse and other issues counselling intermittently – sometimes helpful, sometimes not.

[9] The conclusion was:

Consider psychiatric referral – my concern – specifically would be schizoaffective, or bipolar disorder.

[10] On 22 February 2007, the Victoria Clinic records “low mood” and that the appellant “has tried several antidepressants previously. lack of effectiveness.”

[11] On 4 November 2010, the appellant admitted to her GP she was depressed. On 2 March 2011, her GP recorded:

Also quite stressed in her life... as a result, a three-year relationship has just broken up which she is obviously upset about.

[12] On 13 March 2012, her GP submitted an injury claim form for a mental injury being “depression”, noting an accident date of 13 March 2012 and the description:

Depression up to 20 years caring full time for two family members with ACC covered injuries, with no plan to get their life back to normal.

[13] On 12 June 2012, ACC declined cover because the appellant had not suffered a physical injury.

[14] In April 2012, her GP noted a diagnosis of “post traumatic stress disorder with delayed onset”. In the mental injury report – work-related traumatic event, the appellant’s doctor said:

Fits a delayed onset PTSD picture in that she has had to experience the trauma and threat of trauma to her sons – earlier to (the younger son) and later (the older son) from his rape experience – she has been subjected to repeated exposure to this also in that explanation have had to be given over and over for various purposes e.g. WINZ, legal, ACC, counsellors. Her responses have involved intense fear, helplessness and horror.

[15] On 12 February 2020, the appellant was assessed by neuropsychiatrist, Dr Gil Newburn. Dr Newburn set out a detailed account on her history and noted:

Things reach somewhat overhead in 1991 when her son was found attempting to engage an anal sex with a neighbour's boy. Clearly he had learned this from somewhere else, and this was the first clear clue to abuse. He subsequently attempted to engage in sexual activity with his younger brother, and a further stressor developed for the appellant in running guard for the younger son while trying to ensure the older son had adequate activities available to him. This finally reached a head when she found her son masturbating his younger brother and this resulted in an overwhelming overload for her. She has observed sexual abuse, and was also confronted with the fact that her "guard duty" had not been effective, threatening further her sense to maintain any mastery or control of the situation.

[16] Dr Newburn concluded:

The appellant is presenting with typical features as described by the modern literature relating to ongoing chronic stressors.

...

She does have I believe a clearly defined case of being an observer of sexual abuse in a child which is consistent with her PTSD symptoms, and co-relates with the development of PTSD as set out in the Act.

[17] On 7 August 2020, the appellant's GP submitted a claim for a work-related mental injury.

[18] On 26 August 2020, the appellant completed a mental injury claim questionnaire. She explained that she had sought treatment for mental health concerns "between 1991 – 2019 from numerous counsellors, psychotherapists, doctors, but they did not help". The appellant also included other information she felt was relevant to her claim. She said:

I have sought treatment in care for my abused children since 1991. ACC have caused so much additional injury to my family. Every time I have supported my son to speak out and name the 8 additional abusers, the Ministry of Social Development have stopped my sons or else my accommodation supplement, made us homeless and more vulnerable making me and my children transient. ACC has full knowledges of this.

[19] The appellant's claim was referred to the complex mental injury claim panel (the panel) for consideration. On 1 October 2020, the panel responded:

The panel considers that the client's claimed mental injury was not caused by a single event as the information suggests that witnessing the assaults occurred over a period of time and would be considered a series of events (that didn't comprise a single incident or occasion) and that the evidence relate indicates that she received treatment for the mental injury that she has sought cover for prior to 1 October 2008.

[20] The panel also had reservations about whether the claimant was "at any place for the purposes of her employment" and/or "having a break from work for a meal or rest or refreshment at ... her place of employment" when the event took place, but did not consider this required further investigation given the other parts of s 21B that had not been met. The panel recommended that cover for a work-related mental injury be declined.

[21] On 8 October 2020, ACC declined cover explaining:

We can only provide cover when the mental injury is caused by a single traumatic work place event that was directly experienced or witnessed by you. The event that you experienced does not qualify as confirmed by the attached comment by our complex mental injury panel.

[22] The appellant applied for a review of ACC's decision.

[23] On 17 February 2021, Dr Newburn provided a further report in which he said:

There appears to be an issue about whether or not there has been a single event. In my report, I described three events associated with her son engaging in sex with a neighbour's boy, engaging in an attempt to anally rape his brother and then subsequently masturbating his brother. Each event is relevant, but carries with it a core of her son being observed by her engaging in inappropriate sexual activity. It is this process that is associated with her development of post traumatic stress disorder. The central theme is of her son's behaviour and the impact that this has had on her. Her ongoing reexperiencing events have involved her son engaging in sexual assault. They have in particular been associated with her son's younger brother being the victim of sexual assault. Her ruminations consistently relate to her son as victim.

Appellant's submissions

[24] Mr Beck acknowledges that this case has an unusual factual background, but the issue is whether it fits within the statutory interpretation of s 21B(1)(b) of the Act which provides cover for a personal injury that is a work-related mental injury.

[25] Mr Beck refers to the judgment of Judge Mathers in *Toomey*¹ where her Honour said:

Bearing in mind the factual situation, I agree with Ms Newman that the phrase “purposes of employment” in s 28 should not be read down to prevent cover and should be given a fair interpretation consistent with the overall statutory purpose of the ACC legislation.

[26] Mr Beck submits that if the claim can plausibly fit within the legislation, it should be included. He says there is no doubt that the appellant witnessed a traumatic event and that Dr Gil Newburn, neuropsychiatrist, has provided the only expert psychiatric evidence in this case.

[27] Mr Beck submits that the Court has to pay close attention to the medical evidence and that Dr Newburn concludes:

She does have I believe a clearly identified case of being an observer of sexual abuse in a child which is consistent with her PTSD symptoms and correlates to the development of PTSD as set out in the Act.

[28] Mr Beck submits that ACC only have the internal complex mental injury panel report of 1 October 2020 which does not say that Dr Newburn’s conclusions are wrong. Rather the panel is of the view that the mental injury is not caused by a single event “as the information suggests that witnessing the assaults occurred over a period of time and would be considered a series of events”.

[29] Mr Beck refers to s 21B dealing with cover for work-related mental injury.

[30] He notes that it must be caused by a single event and that the injury must be caused after 1 October 2008 and that pursuant to s 36(1):

The date on which a person suffers mental injury in the circumstances described in s 21B is the date on which the person first receives treatment for that mental injury as that mental injury.

[31] He notes that the appellant’s first treatment for PTSD was after 2008.

¹ *Toomey v ACC* [2017] NZACC 44 at [34].

[32] He notes that Dr Newburn was the only person to identify post traumatic stress disorder as a result of the event and that that was in 2019. There is no evidence to the contrary i.e. that the appellant was treated for post traumatic stress disorder prior to 2008.

[33] In respect of the requirement of s 21B(1)(b) that the mental injury is caused by a single event, Mr Beck submits that the event in 1996 was the only event of this kind that was actually witnessed by the appellant.

[34] Mr Beck says that Dr Newburn is the expert in respect of the causal link to PTSD as a result of the appellant witnessing abuse. Therefore, he says the statutory test is satisfied.

[35] Mr Beck then turns to the second requirement namely that the event was so witnessed by the appellant while she was at work.

[36] Mr Beck notes that the requirement of s 28(1)(a) is that a person suffers the injury –

- (a) While he or she is at any place for the purpose of his or her employment, including, for example, a place that itself moves or a place to or through which the claimant moves; or
- (b) While he or she is having a break from work for a meal or rest or refreshment at his or her place of employment...

[37] Section 28 goes on to include the personal injury while travelling to start or finish work in transport provided by the employer.

[38] Mr Beck submits simply that at the time in 1996, she was at home for the purposes of her employment and that therefore the statutory definition is satisfied and that the injury event, the sexual abuse by her older son witnessed by her satisfies the test.

[39] Accordingly, there was no basis or reason for ACC to exclude this from cover.

Respondent's submissions

[40] Mr Coates spoke to his written submissions. He acknowledges that careful analysis of s 21B is required in this case.

[41] He notes that only one event was witnessed in 1996.

[42] He says that the Corporation's position is that mental injury was not caused here by a single "sudden" event. He submits even if the appellant's mental injury was caused by a sudden event or series of events arising from the same cause, ACC's position is that it did not occur while the appellant was in a place for the purposes of her employment.

[43] He submits that the question as to whether a single event caused the appellant's PTSD is a factual issue and that as such ACC's position is not prejudiced by the fact that it has not involved a medical expert to make a diagnosis. ACC acknowledges the event occurred as described by the appellant.

[44] Mr Coates refers to the letter from Dr Upsdell of 30 April 2012 which does not reference a single 1996 event. He acknowledges however that the events listed in that report were clearly all stressful and that there was understandable trauma for the appellant.

[45] He refers the medical notes from the Victoria Clinic and notes that they record much more than one incident.

[46] He refers to the appellant's letter to ACC dated 7 May 2019 where there is considerable reference to the sexual abuse suffered by her other son.

[47] He notes that in Dr Newburn's first report of 12 February 2020, there is reference to the abuse of her older son and it is recorded that "things reached somewhat of a head in 1991" when her son was found attempting to engage in anal sex with neighbour's boy. Mr Coates notes that this was some 5 years before the event relating to her younger son in 1996.

[48] Mr Coates notes that towards the end of Dr Newburn’s report, Dr Newburn says:

The appellant is presenting with typical features as described by the modern literature relating to ongoing chronic stressors.

[49] Mr Coates records that ACC referred the appellant’s claim to the complex mental injury panel who considered that the appellant’s mental injury was not caused by a single event “as the information suggests that witnessing the assaults occurring over a period of time ... would be considered a series of events”.

[50] He refers to Dr Newburn’s further report 17 February 2021 where he says:

There appears to be an issue about whether or not there has been a single event. ... each event is relevant, but carries with it a core of her son being observed by her engaging in inappropriate sexual activity ... They have in particular been associated with her son’s younger brother being the victim of the sexual assault, this being what she witnessed. Her ruminations consistently relate to her son as victim.

[51] Mr Coates says that Dr Newburn’s report is not quite right as the 1996 event was the only one witnessed while she was at home at work on the phone.

[52] Mr Coates refers to the decision in *MC*,² where a man was diagnosed with a delayed onset PTSD linked to a number of traumatic events during his employment with police and a period of time he spent as a soldier on active combat in Afghanistan. Judge MacLean found that the cover was excluded for gradual process work-related mental injury. As to the difference between a series of events and a gradual process, Judge MacLean in essence found that a series of events required a “series of specific” events rather than “gradually incremental” events.

[53] ACC’s submissions in this case are that the facts demonstrate “gradually incremental” events leading to her developing PTSD and accordingly cover is excluded.

[54] Mr Coates referred to Dr Upsdell’s comment that the appellant had been subjected to repeated exposure to (the trauma and threat of trauma to her sons).

² *MC v Accident Compensation Corporation* [2016] NZACC 264.

[55] Mr Coates submits that s 28(1) should be interpreted to require the series of events to be work-related. He says there is no evidence that any of the other events were related to the appellant's work rather the ongoing stress and anxiety about her elder son's behaviour and the risk to a younger son is better characterised as occurring in the course of her everyday home life.

[56] He submits that s 28 does not require to be read down otherwise everything that occurs in the appellant's house would be covered.

Appellant's reply

[57] Mr Beck submits that the event in this case can be plausibly fitted in with the words of the statute and therefore, there should be cover. He submits that the definition of "work-related" is deliberately drawn wide. He submits that it would be improper to exclude people from cover simply because they worked at home. He submits that she was at home working at the time and that therefore there has been compliance with the Act.

Decision

[58] So far as it is relevant, s 21B provides as follows:

- (1) A person has cover for a personal injury that is a work-related mental injury if—
 - (a) ...
 - (b) the mental injury is caused by a single event of a kind described in subsection (2).

[59] Section 21B provides:

- (2) Subsection (1)(b) applies to an event that—
 - (a) the person experiences, sees, or hears directly in the circumstances described in section 28(1); and
 - (b) is an event that could reasonably be expected to cause mental injury to people generally; ...
- ...
- (5) In subsection (2)(a), a person experiences, sees, or hears an event directly if that person—
 - (a) is involved in or witnesses the event himself or herself; and

(b) is in close physical proximity to the event at the time it occurs.

...

(7) In this section, event—

(a) means—

(i) an event that is sudden; or

(ii) a direct outcome of a sudden event; and

(b) ...

(c) does not include a gradual process.

[60] Section 36(1) provides:

The date on which a person suffers mental injury in the circumstances described in section 21 or 21B is the date on which the person first receives treatment for that mental injury as that mental injury.

[61] In our case, an ACC injury claim form was completed on behalf of the appellant at the Victoria Clinic by Dr Upsdell on 30 March 2012. The diagnosis was depression with the injury description being:

Depression after 20 years caring full time for two family members with ACC covered injuries, with no plan to get their life back normal.

[62] Dr Upsdell in a letter to ACC dated 30 April 2012 said this under the heading – “description of causal link”:

Fits a delayed onset PTSD picture in that she has had to experience the trauma and threat of trauma to her sons – earlier to ... the younger son and later (the older son) from his rape experiences – she has been subjected to repeated exposure to this also in that explanations have had to be given over and over for various purposes e.g. WINZ, legal, ACC, counsellors. Her responses have involved intense fear, helplessness and horror. She has had recurrent intrusive distressing recollections of events and she has been caught up in including secondary issues relating to issues regarding financial support, professional support and in recent times failure regarding provision for (her older son) rehabilitation process (six and half years). She has certainly experienced over and over acting and feeling as if traumatic events were recurring.

[63] In her evidence before the reviewer, the appellant described her home-based business:

I owned a timber importing and distribution business and I ran the office from home. I had contractors engaged in the timber milling yard and I contracted all the delivery and that out to Freight Companies. So everything I did was home based and on the phone and I would work out the selected

lengths and advised customers on products and finishes and took the orders as – that would – I would work from 6 in the morning until 9 at night. I had a niche business. It was the top performer at that time in the country. It definitely wasn't the biggest. It was small, it was niche, but it was the top performer, the way I ran it, the way I had managed it and set it out. That's because I was available to deal with the customers, architects, builders whoever was looking to purchase my timber.

...

By this time [my younger son] was four years old and I – I'd been asking for treatment plan for [my older son] and for [my younger son] since 1991, since I knew that [my older son] had an injury, and [my younger son] had not been able to investigate his own home or have any independence within his own home for his safety but he had got to the stage that ... he had had enough of being stopped from playing and that at this time, when I was on the phone, I suddenly realised he wasn't beside me. I went to look for him and when I saw him, he was watching TV and [my older son] had his hand down his pants molesting him.

This was the first time that I had seen [my older son] molesting him, but the worst – it wasn't that. It was the fact that [my younger son] had stopped calling out for help. He previous to then, when it first started when he was two years old, he had call out for help. This time, it was obviously to me that [my older son] had – [my younger son] had become totally sexualised and he had given up trying to get help. That was the critical point because I knew I had no help for [my older son] and no support for him, and that meant that I would be managing the two of them on my own without any supports and I knew I couldn't do it. And I was so angry with [my older son] because I had put so much work into trying to, but nobody had given me the assistance to understand that sexually reactive behaviour and exactly what I was dealing with. And I thought I was going to harm [my older son], who I loved and cared for equally for both of my children. I was so furious that [my younger son] was now totally sexualised as well.

On this day is what I saw and what I knew and that caused me to snap and I thought I was going to hurt [my older son] and I wanted to because I was trying to protect him and I was trying to protect [my younger son], both of them, from further harm, which is what had been happening since the time would asked for support. There had been no safety, no care, no rehabilitation, no return to independence. Our lives had stopped moving forward we were just trying to manage, cope from day to day. I though I was going to hurt [my older son] and that really scared me because I loved him and cared for him so much. I knew if I hurt [my older son], I would be blamed and I would be removed, and then there would be nobody to care for or support either [my younger or my older son]. In my terror and distress, I thought maybe if I got the hammer and I hammered – broke [my older son's] fingers, he wouldn't be able to molest his brother anymore.

[64] Neuropsychiatrist Gil Newburn in his report of 12 February 2020 said this:

[The older son] subsequently attempted to engage in sexual activities with his younger brother, and a further stressor developed for [the appellant] in running guard for the younger son while trying to ensure that [the older son]

had adequate activities available to him. This finally reached a head when she found her [older son] masturbating his younger brother and this resulted in an overwhelming overload for her. She was observing sexual abuse, and was also confronted with the fact that her “guard duty” had not been effective, threatening further her sense to maintain any mastery or control over the situation.

Since then, she has a typical range of symptoms consistent with post traumatic stress disorder.

...

She does have I believe a clearly defined case of being an observer of sexual abuse in a child, which is consistent with her PTSD symptoms and correlates with the development of PTSD as set out in the Act.

[65] It is noted that the ACC complex mental injury panel in its brief report of 1 October 2020 said:

The panel considered that the client’s claimed mental injury was not caused by a single event as the information suggest that witnessing the assaults occurred over a period of time and would be considered a series of events (that didn’t comprise a single incident or occasion) and that the evidence indicates she received treatment for the mental injury that she has sought cover for prior to 1 October 2008. The panel also had reservations about whether the claimant was “at any place for the purposes of ... her employment”.

[66] In this case, the panel report is extremely brief. It would have been helpful if the panel had provided more detailed reasons for its thinking and conclusions.

[67] Dr Newburn provided a further report on 17 February 2021 in it he said:

There appears to be an issue about whether or not there has been a single event. In my report, I described three events, (one of which was personally witnessed), associated with her (older) son engaging in sex with a neighbour’s boy, engaging in an attempt to anally rape his brother, and then subsequently masturbating his brother. Each event is relevant, but carries with it a core of her son being observed by her engaging in inappropriate sexual activity. It is this process that is associated with her development of post traumatic stress disorder. The central theme is of her son’s behaviour, and the impact that this has had on her. Her ongoing reexperiencing events have involved her son engaging in sexual assault. They have in particular been associated with her son’s younger brother being the victim of sexual assault, this being what she witnessed. Her ruminations consistently relate to her son as victim.

[68] I note Judge MacLean’s judgment in *MC*³ refers to Judge Ongley’s decision in *Waghorn*⁴ which said this:

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

[69] Judge MacLean went on:

While *Waghorn* was dealing with a different situation, in my view the explanation of distinguishing a “series of events” from a “gradual process” is helpful.

[70] Likewise, in *Jeffrey*,⁵ Judge Mathers also agreed with Judge Ongley’s approach saying:

[56] Judge Ongley in *Waghorn*, adopting an approach with which I agree, distinguished between events that are so gradually incremental that they cannot be distinguished one from the other, as against a series of forceful events each contributing in some gradual process.

[71] Judge Mathers went on:

I would add that there must be a focus on what the series of events are. Are there any events that can be distinguished from say a gradual process of mental stress caused by work overload. In this case, of course, the period available for a gradual process was limited to the actual period of secondment, as Ms Armstrong points out when attempting to distinguish the other cited authorities.

[72] Although the contexts of *Jeffery* and *Waghorn* are different, I agree with the conclusion reached in both that if an event which is one of several contributes in a significant way, then provided the other statutory criteria are met, she would be entitled to cover.

³ See *MC* n2 at [72].

⁴ *Waghorn v Accident Compensation Corporation* [2013] NZACC 2.

⁵ *Jeffrey v Progressive Enterprises Ltd v Accident Compensation Corporation* [2015] NZACC 4.

[73] In this case, s 21B(2)(b) requires that the particular event could reasonably be expected to cause mental injury to people generally. In this regard, effectively the only forensic evidence before the Court is that of Dr Newburn who says:

Each event is relevant, but carries with it a core of her son being observed by her engaging in inappropriate sexual activity. ... There have particular been associated with her son's younger brother being the victim of sexual assault, this being what she witnessed. Her ruminations consistently relate to her son as victim.

[74] In her evidence before the reviewer, the appellant said:

On this day is what I saw and what I knew and that caused me to snap and I though I was going to hurt my older son...In my terror and distress, I thought maybe if I got a hammer and I hammered – broke [my older son's] fingers, he wouldn't be able to molest his brother anymore.

[75] For the sake of completeness, I find that s 21B(7)(b) is satisfied. The event witnessed by the appellant on that occasion was sudden.

[76] Next, s 28 is considered. In order for cover to be granted, the mental injury must otherwise satisfy the definition of a work-related personal injury as set out in s 28.

[77] Subsection (1)(a) requires that the personal injury is suffered while the appellant was at any place for the purposes of her employment. This requirement is satisfied on the evidence before the Court.

[78] In his written submissions, Mr Coates submits that only part of a home, perhaps an office can be accepted to be a place of employment. This submission is problematic. Plainly if a person suffered a work-related mental injury at a traditional place of employment, then it would not matter if the injury occurred for example in the case of office worker, in the worker's office, in the lunchroom, in a meeting room, in an ablution/toilet block or generally within the parameters of the work place, including for example a work carpark. If one were to apply this type of template to a home office, and I discern no reason in the legislation not to do so, the work place would include not only the home office but the kitchen dining room area, the bathroom, the garage, the entrance way and possibly the patio area given that

similar areas often form part of an employee's work place at traditional places of employment.

[79] It seems to me that as working from home becomes more prevalent, the issues that arise in this case would arise more frequently in the future and require to be the subject of careful analysis. Plainly the dividing line in a practical sense will be whether or not at the time of the mental injury, the claimant was at their home for the purposes of their employment.

[80] Ultimately, analysis of that particular issue is not required in this case given the explanation by the appellant that the incident occurred while she was on the phone to a client.

[81] I find therefore that the incident she witnessed was "work-related" for the purposes of the Act.

[82] The evidence of her sustaining an injury on that occasion that is causally related to her diagnosis of PTSD is not strong from a diagnostic stand point; the evidence of Dr Newburn being somewhat muddled.

[83] What bolsters the appellant's position is her graphic and unchallenged evidence of the occasion which occurred and how, given her family background with her older son, and the abuse that had occurred to him, had rendered her, for want of a better expression, hypervigilant, when it came to providing a mother's protection to her younger son.

[84] Given the vivid depiction by the appellant of the effect that it had on her, I accept that this incident in 1996 is causally related to her diagnosis of post traumatic stress disorder and that she has satisfied the criteria for a work-related mental injury.

[85] Accordingly, the appeal is allowed and the review decision of 18 May 2021 is quashed.

[86] If there is any issue as to costs, the parties have leave to file memoranda in respect thereof.



Judge C J McGuire
District Court Judge

Solicitors: Claro, Wellington
Hazel Armstrong Law, Wellington