

Dr Nick Smith
Minister for ACC
New Zealand House of Representatives

10th November 2009

Dear Dr Smith,

ACC changes in the processing of Sexual Abuse Claims and the revision of ACC legislation.

I had the pleasure of meeting you in your caravan in Nelson on 17th October with a group of colleagues. At that meeting I felt that you listened carefully to our concerns about the new administrative processes for ACC “Sensitive Claims”. You were careful to draw distinctions between what was in your power as a parliamentarian and minister and what, you felt, were the responsibilities of ACC.

At the meeting we explained our concern that ACC were distorting the so called “Massey Guidelines” in ignoring the distinction between the psychological consequences of adult Sexual Assault and of Childhood sexual abuse. I note that Massey University have now distanced themselves from ACC in a press statement (attached). Also both the New Zealand Psychological Society and the College of Clinical Psychologists have, in a joint statement, voiced their concern (attached), thus joining the voices of the Psychotherapists, Counsellors, Social Workers, community sexual abuse agencies, the Council of Women of New Zealand and many others in a universal condemnation of ACC’s new pathway. You will thus note (contrary to ACC’s assertions) that there is **no basic disagreement between the various professional groups.**

At the meeting we were also concerned that ACC are interpreting a court decision (Judge Cadenhead in ACC v Geerders (decision number 188/2004)) as a legal imperative that forces them to require a clinical diagnosis in order to consider claims for mental injury. **You said that one of the things that Parliament can do is to change law.**

The IPRC Act provides cover for mental injury: “mental or nervous shock” (Part 2 Section 21A) caused by certain criminal acts. Section 27 defines Mental Injury as: “a clinically significant behavioural, cognitive, or psychological dysfunction”.

ACC are saying that the court judgement interprets this as an injury that is diagnosed by a clinician trained at a tertiary level in psychiatric diagnosis. As you said at our meeting, ACC is concerned with **Injury**, not **Illness**. Injury is related to impairment, or dysfunction: the consequence of an accident that affects the ability to work, to make and sustain relationships, to participate in sport or education, to participate in ordinary life. This is surely the basis of ACC, not illness, whether physical or psychiatric.

The online medical dictionary defines injury as follows:

- “1. Damage, harm, or loss, as from trauma.
2. A particular form of hurt, damage, or loss.”

It defines illness as:

“Disease of body or mind; poor health; sickness.”

(<http://medical-dictionary.thefreedictionary.com>)

Although some illnesses arise from injury it is the primary injury that is the basis of the ACC scheme.

I believe either that Judge Cadenhead was wrong or that ACC has been poorly advised on the consequences of this decision. I am concerned that this interpretation has forced the hand of ACC in making them rely on the assessments of psychiatrists or clinical psychologists before they can accept any claim for sexual abuse mental injury.

Experience since the new “Pathway” has been introduced is that there are insufficient clinicians willing and/or available to do this work and that the ACC Sensitive Claims Unit is swamped by calls from survivors of criminal acts who are unable to find clinicians acceptable to ACC. There is also serious and understandable concern in the community that the labelling of victims of crime as mentally ill is inhumane and potentially a human rights violation.

As a clinician I am not averse to the use of diagnosis. However, its use has to be carefully considered, especially in relation to the consequences for the client/patient. I think it has a place in the treatment of more deeply entrenched and disabling dysfunction, usually involving long term work. Even then it is not central to the work, only part of a “formulation” where causative factors are considered, as well as properly thought-out plans for treatment.

I ask you, as Minister for ACC and sponsor of the ACC changes currently before Parliament to consider a change in the wording of the Section 27 definition of Mental Injury so that it is clear to ACC that it does not have to rely on a psychiatric diagnosis in order to accept a claim for mental injury from criminal acts.

My suggestion is that the definition read:

Mental Injury is defined as a significant impairment in everyday cognitive, behavioural, emotional, psychological or social functioning that has been described by, and is amenable to treatment from a suitably qualified health provider; and which, following treatment, would normally improve to a degree that is over and above any improvement that would be expected to occur naturally over time.

I would be pleased to discuss this further with you, or your representatives.

Regards

Eric Medcalf
Convenor Ethics Committee
New Zealand Association of Counsellors
Council Member
New Zealand Association of Psychotherapists.

PO Box 12 556, Wellington
021 475 544