Accident Compensation: 40 Years On -
A Celebration of the Woodhouse
Report: Compensation for Personal
Injury in New Zealand: Report of the
Royal Commission on Inquiry

Common Law Actions on the
Margin
Rosemary Tobin
1972 & 1982 legislation

- Cover was for “personal injury by accident”. This Included:
  - (i) The physical and mental consequences of any such injury or the accident;
  - (ii) Medical, surgical, dental, or first aid misadventure;
  - Incapacity from occupational disease or industrial deafness;
  - Actual bodily harm (including pregnancy) arising from certain sexual offences.
Post 1992

- Cover was for personal injury - s26
  - (a) the death of a person; or
  - (b) physical injuries suffered by a person, including, for example, a strain or a sprain; or
  - (c) mental injury suffered by a person because of physical injuries suffered by the person; or
  - (d) mental injury suffered by a person in the circumstances described in section 21; or
  - (e) damage (other than wear and tear) to dentures or prostheses that replace a part of the human body.
Two areas of intersection

- Psychiatric injury
- Unwanted pregnancies
Psychiatric Injury

Whatever is unknown about the mind-body relationship.. it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact.”
Psychiatric injury - pre 1992

- Covered in ACC v E
- Entirely consistent with the common law and the workers compensation scheme.
Psychiatric injuries - post 1992

- As we have seen - Personal injury defined as physical injury and any mental injury as a result of the physical injury.
- Mental injury alone excluded.
- Consistent with the Woodhouse Report?
- Inconsistent with Health and Safety legislation
- Inconsistent with duty owed by an employer to his/her employee.
Proposed Change: Injury Prevention, Rehabilitation and Compensation Amendment Act (No 2)

- Work related mental injury is to be covered. If:-
- The mental injury is caused by a single event that
- The person experiences, sees, or hears at work; and
- That is sudden;
- And is an event that could reasonably be expected to cause mental injury;
- And is experienced, seen or heard by the person directly, and occurs in NZ.
Leaves Common Law for Non Work Accidents

- *Queenstown Lakes District Council v Palmer* remains unchanged.
- As does *Van Soest Residual Health Management*
- Consistent with the Woodhouse report?
Unwanted pregnancies

- Minefield
- Pre 1992 - covered as a personal injury by accident.
- Post 1992 - problem with the definition of personal injury
- Inconsistent decisions until ACC v D, now on appeal
Cooke P thought the inclusion of medical misadventure in the “personal injury by accident” definition made it easier to find that an unplanned pregnancy was covered where there had been medical negligence: failure to properly advise, sticking forceps, scarring of broad ligaments instead of fallopian tubes.

Cover did not extend beyond the birth of the child.

Decisions probably assisted by the “generous’ and “unniggardly” approach the courts thought should be taken - *Green v Matheson* & *Willis v AG*
Difficulties - post 1992

- The need for a personal injury
- Conception? Pregnancy? Childbirth?
- Cover declined until ACC v D
ACC v D

- In common parlance pregnancy could be considered an injury either because it could be said to be "harm" or because it was an invasion of bodily integrity.
- Pregnancy involved changes to the body, discomfort, inconvenience, distress and pain, which from a practical perspective, required a pregnant woman to adjust the way she would otherwise operate - effects were capable of being described as an injury.
- A gradual process injury covered by the treatment injury (medical misadventure) exception.