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Fifty years since the Woodhouse Report

BY DON RENNIE

ON 13 DECEMBER 1967 THE ROYAL COMMISSION ON "Compensation for Personal Injury in New Zealand" chaired by Sir Owen Woodhouse, reported its findings to the Governor-General Sir Arthur Porritt.

The report, which became known as the Woodhouse Report, attracted worldwide attention because it exposed the shortcomings of the common law fault system which relied on accident victims being able to prove their injuries had been caused by negligence or a breach of a duty of care owed to the victim by another party.

It analysed the standard of care imposed by the law, including the special vicarious liability of employers for the negligence of their employees, and the impact of the rules relating to contributory negligence. It also discussed the nature of damages and the difficulties faced by litigants in proving actual economic losses, including future losses by reason of diminished earning capacity, pain and suffering and loss of capacity for enjoying life. It discussed what had been called the "forensic lottery" of the common law action as a method for compensating accident victims.

The report's recommendations changed the emphasis from finding fault to looking at the needs of the accident victim and the public interest in overcoming the costs and uncertainties of both the common law tort system and the failure of the statutory workers' compensation and other systems designed to provide adequate compensation and rehabilitation to the injured. It looked at the overall effect on the community of the impact of personal injury and the cost of maintaining the insurance-based system.

Five guiding principles

The report set out five guiding principles which it said should be the role of any modern system of compensation for injured persons. Those five principles are:

- · Community responsibility,
- · Comprehensive entitlements,
- · Complete rehabilitation,
- · Real compensation,
- · Administrative efficiency.

While it was clearly intended that the Woodhouse principles were to form the framework of a new legal system, the proposed changes were so dramatic and revolutionary that they gave rise to considerable debate before a select committee. But it did pass and the National Government introduced the Accident Compensation Act 1972 which provided compensation for personal injury by accident. It was a "no fault" scheme but compensation was only available for earners and victims of motor vehicle accidents, leaving the remainder of the community to pursue common law remedies.

In 1972, National was replaced by the Labour Party and the new Government passed the Accident Compensation Amendment Act 1973 which provided a more comprehensive scheme covering non-earners and abolished the right to sue in a New Zealand court to recover damages for personal injury.

The legislation was modelled on what had driven the previous workers' compensation and similar legislation. It was detailed and complex and some thought it was not appropriate for implementing the Woodhouse principles. For example, the Woodhouse Report in pursuit of the principle of community responsibility, recommended that the scheme not be funded by variable levy rates based on assumed risks to earners in different

> industries. Instead it suggested a flat levy of a fixed percentage of payroll in the case of employees or tax assessable income in the case of the self-employed. Furthermore it suggested that the levy should be collected not by the ACC, but by IRD as part of normal annual tax payment. The original 1972 legislation and every amendment since has adopted a variable levy rate system for funding the scheme which has contributed not only to the ACC's considerable cost of administering the scheme, but also imposed unnecessary cost on levy

The report's recommendations changed the payers.

A long and complex statute

There have been several amendments to the Act over the years. The latest is the 2001 Act which, although it has since had further amendments, provides the basis for the current law. It is a long and complex statute with 401 sections and several pages of schedules. In addition a significant jurisprudence has developed over the last 43 years

emphasis from finding fault to looking at the needs of the accident victim and the public interest in overcoming the costs and uncertainties of both the common law tort system and the failure of the statutory workers' compensation.



with the courts ruling on the proper meaning and application of the legislation.

It should be pointed out that s 3 of the 2001 Act states that the purpose of the Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by:

- · Reducing the incidence and severity of personal injury,
- Collecting, co-ordinating and analysing injury related information,
- · Emphasising rehabilitation,
- Ensuring that claimants receive fair compensation including lump sums,
- Ensuring the effective operation of the Code of ACC Claimants' Rights,

Ensuring that people who suffered personal injury before the commencement of the Act continued to receive entitlements. While the effectiveness of the legislation may be questioned, it may be said that the Woodhouse Report provided the basic guide for the massive change in personal injury law in New Zealand. The scheme is a unique means of providing fair and adequate treatment, rehabilitation and compensation for accident victims and remains a system which

is significantly less costly that the common law insurance-based legal alternatives.

Don Rennie is convenor of the New Zealand Law Society's Accident Compensation Committee. He joined the Accident Compensation Corporation in 1974 after 14 years in private practice and is widely published in the areas of accident compensation and personal injury.