

ACC and the Woodhouse Principles: Complete rehabilitation

BY **DON
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In the third in this series of articles looking at each of the Woodhouse principles and the extent to which they are embodied in the legislation and its administration by the ACC, Don Rennie considers the need for complete rehabilitation for all persons covered by the scheme. While he is the convenor of the Law Society's ACC Committee, the views expressed in this article and the series are those of Mr Rennie and not necessarily those of the Law Society.

THE THIRD PRINCIPLE THE Woodhouse Report recommended to be the basis of any statutory system designed to replace common law rights, is the need for complete rehabilitation for all persons covered by the scheme.

In discussing the objective of rehabilitation, the report referred to the widely-used definition of rehabilitation in the United States namely: "the restoration of the handicapped to the fullest physical, mental, social, vocational and economic usefulness of which they are capable".

It said that rehabilitation is a total process which begins with the earliest treatment of the injury and does not end until everything has been done to achieve maximum social and economic independence. The aim is that this should be achieved in a minimum amount of time (para 354).

The report considered that, for the purposes of rehabilitation,

incapacitated people can be considered in three main groups: (a) those who will quickly recover and return to their activities; (b) others who will eventually be able to return to their work and activities but only after a period of treatment and convalescence; and (c) a relatively small group who will require and deserve much assistance and possible retraining (para 361). The majority of ACC claimants fall into the first category and it is only those in categories (b) and (c) that require direct intervention. There are, of course, numerous cases where what begins as a minor injury later develops into something more serious requiring long-term treatment and rehabilitation.

The Woodhouse Report emphasised the need for early referral, comprehensive assessment and appropriate medical treatment. The assessment should include an appreciation of the victim's intelligence, educational standard, mental and emotional state, general aptitudes and adaptability, motivation, resilience and social and economic background (para 367).

Assessment

Although the assessment is largely medical in nature, it is most usefully provided by the coordinated teamwork of a group of experts in various fields. The assessment team should include, surgeon, physician, psychologist, psychiatrist, social worker, placement officer, physiotherapist, and occupational therapist (para 370).

Paragraph 428 of the report said: "The compensation process should always be secondary to the goal of rehabilitation but it is not enough to pay lip service to the principle. There must be imagination, drive, and leadership which will ensure that the best use is made of facilities; the best sort of co-operation is maintained with the medical profession; and efficient medical administration is achieved in the wide area of the authority itself."

It went on to say: "All this will not be easy and it is a task which must be organised from the beginning. Accordingly, it would be a mistake to underestimate its importance or undervalue the importance of the medical director in

terms of remuneration." (Clause 429).

Rehabilitation on a national basis

The Woodhouse Report observed that rehabilitation can be of benefit to people with a variety of incapacities and involves a broad variety of professional skills needed for help with particular problems. Observing that rehabilitation methods apply to all incapacity arising from whatever cause, it proposed a national body responsible for all rehabilitation whether arising from accident, sickness or disease. Such a body, headed by a qualified rehabilitation medical specialist, would offer a co-ordinated rehabilitation service and would develop expertise and experience available to everyone who needs specialist rehabilitation. In pursuance of the principle of complete rehabilitation, it recommended that the medical branch of the administrative authority (ie, currently ACC) should be under the leadership of an experienced highly qualified doctor to act as Director of Rehabilitation and principal Medical Assessor under whom would be engaged an appropriate number of experienced doctors whose function would include the active promotion of rehabilitation.

Current legislation – entitlements

Entitlements provided under the Act are listed in s 69. They include:

- Rehabilitation comprising treatment, social rehabilitation, and vocational rehabilitation;
- First week compensation;
- Weekly compensation;
- Lump sum compensation for permanent impairment;
- Funeral grants, survivors' grants, weekly compensation for the spouse [or partner], children and other dependants of a deceased claimant, and child care payments.

Rehabilitation

Rehabilitation is defined in s 6 of the 2001 AC Act and means a process of active change and support with the goal of restoring, to the extent provided under s 70, a claimant's health, independence and participation and comprises treatment, social rehabilitation and vocational rehabilitation.

Section 70 says that anyone who has suffered personal injury covered by the Act is entitled to be provided with rehabilitation. There is no age limit on entitlement to rehabilitation. However, the ACC's responsibility is limited to the extent provided by the Act which says that the person is responsible for his or her own rehabilitation to the extent practicable have regard to the consequences of the injury. It is important to note that the ACC's responsibility only extends to the consequences of the injury and not to other causes.

Emphasis on cost

A further limitation on entitlement to rehabilitation provided by s 70, is found in s 324 which allows the making of regulations prescribing not only the cost the ACC is liable to pay, but also the circumstances in which, and the method by which, it makes payment or contributes towards rehabilitation. There is a clear indication that the cost of rehabilitation is considered of most importance even to the extent of ignoring the needs of an injured



person who has lost common law rights. The Act and regulations and the way they are administered by ACC with the emphasis on cost, falls far short of what was envisaged by the Woodhouse Report. It has been the source of many reviews and appeals against ACC decisions related to both social and vocational rehabilitation.

Prior to ACC, with the assessing of common law damages to pay for a future rehabilitation process, there was no limitation because it might have "cost the insurance company too much". Accordingly, appropriate rehabilitation under the ACC scheme should not be limited by cost. Currently, rehabilitation is likely to be provided by ACC if the injured person is an earner and therefore entitled to weekly compensation until capable of resuming their previous employment, alternative employment by the same employer, or other employment. ACC clearly recognises that the sooner a claimant can return to employment, the

less it will cost in weekly compensation payments. It is rare for an earner who has reached the qualification age for receiving national superannuation (ie, 65), to be offered a comprehensive rehabilitation programme until they can return to employment. Rehabilitation for accident victims was a common law right and is now a statutory right but is limited in such a way that complete rehabilitation is in many cases not possible.

To repeat the reference above to para 428: "The compensation process should always be secondary to the goal of rehabilitation but it is not enough to pay lip service to this principle."

Social rehabilitation

Section 79 of the Act says that the purpose of social rehabilitation is to assist in restoring a claimant's independence to the maximum extent practicable. Section 81(1) lists the key aspects of social rehabilitation for which the ACC is responsible and

subsection (4) lists the conditions which apply to its delivery.

Section 82 gives the ACC a discretion to provide social rehabilitation if:

- a It is a direct consequence of personal injury covered by the Act and;
- b The claimant has been assessed or re-assessed as needing it and;
- c The ACC considers that it is for the purposes set out in s 79; it is necessary and appropriate and of quality and;
- d It is part of an agreed rehabilitation plan.

All of this is subject to regulations made under ss 324 and 325. The ACC is given the power to limit the application of the principle of complete rehabilitation recommended by Sir Owen Woodhouse in a way that it is not provided according to actual need but is limited by statute.

Vocational rehabilitation

Vocational rehabilitation is a statutory right under s 69(1)(a) of the Act. The ACC's liability to provide it is contained in s 85 and matters to be taken into consideration when deciding whether to provide it are contained in s 86 and further matters in s 87. Section 88 provides that vocational rehabilitation may start or resume if circumstances change. Section 89 specifies what must be taken into account in the assessment of the claimant's vocational rehabilitation needs. Section 90 specifies that the assessment must be carried out by a person who the ACC thinks has the appropriate qualifications but there is no independent criteria and the ACC can appoint anyone. Section 91 sets out the rules to be followed in the conduct of the initial occupational assessment.

These are further indications where claimants have lost a common law right which is not reflected in the ACC legislation because of the discretions and limitations provided both in the legislation and the regulations. Clearly, the Woodhouse Report principle of complete rehabilitation

is not reflected in the law.

Rehabilitation officers the human face of ACC

When the ACC first started its operations in 1974, rehabilitation officers were appointed with the specific task of ensuring that claimants who required treatment and rehabilitation received the care they needed from appropriate professional providers. The rehabilitation officers had a close relationship with the claimants and worked on a one-to-one basis. They visited them in their homes, attended their workplaces and discussed their social needs with their family, their doctor and their employer. They were the human face of ACC during the rehabilitation process and were on hand to help the claimant through difficult times during their recovery.

Rehabilitation officers gained considerable knowledge and expertise in carrying out their function and were able to quickly identify the specific needs of claimants and where they could get the necessary professional help. They were often able to encourage the claimant to be self-sufficient and get back into society. That function cannot be carried out by a claims manager in the current ACC staffing structure and staff are very aware of the Key Performance Indicators (KPIs) set by their employer.

Statistics

While the ACC has a unique record of every person who has lodged a claim for accidental personal injury in New Zealand in the last 44 years, it has not produced comprehensive statistics on the success rate (or otherwise) of rehabilitation programmes undertaken. There is very little data and no statistics available to the public which show how the ACC goes about providing social rehabilitation to different people in various circumstances. Occasionally individual cases get media attention but no information is available to claimants showing what they can expect from the ACC by way of vocational or social rehabilitation

for their particular case.

By now there should be statistics available with an analysis of the different forms of both social and vocational rehabilitation for various types of injury to different people by age group in different industries and occupations and the consequences which have resulted from the rehabilitation programmes undertaken.

There have been indications in the past that KPIs for staff have been determined by the success of a claims manager in "getting a claimant off the system". Getting a claimant "off the system" meant the claimant being assessed as capable of working and was regarded as the sign that the rehabilitation process had been completed and the claimant was therefore no longer ACC's problem. There is no evidence that ACC follows up claimants who have returned to work or been rehabilitated into society, to determine the extent to which their individual rehabilitation programme has been effective.

Conclusion

The ACC should be a world leader in the rehabilitation of injured people covered by the Act, but for many years it appears that getting claimants "off the system" has taken priority over ensuring that a claimant's health, independence and participation for all the ongoing consequences of the injury, has been aimed at achieving the optimum result.

The ACC cannot claim it has an outstanding or even a successful record in achieving what the Woodhouse Report recommended in providing all accident victims with complete rehabilitation. ■

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