



Fees for ACC reviews and appeals

BY **DON RENNIE**

A RECENT CASE HAS HIGHLIGHTED AN ISSUE FOR LAWYERS AND advocates who charge a fee for representing a claimant in a review or appeal against an ACC decision.

Natasha Howell of Christchurch had her weekly ACC payments stopped. In June 2017 she engaged Andrew Cadenhead, an enrolled barrister and solicitor who does not have a current practising certificate but acts as an advocate. He agreed to represent her on a fee payable basis. She was given two options: to pay \$5,000 to \$6,000 upfront, or "all and any back paid weekly compensation payable to her by the Corporation in addition to any costs of whatever nature". She was unable to pay the money upfront and chose the second option. At the time she says she was suffering severe pain, her mother was dying and she was "not thinking straight". She says she did not understand the payment proposal in the contract. Because she wanted her weekly compensation payments to resume she felt she had no alternative but to accept.

At a mediation meeting on 12 February 2018 the ACC agreed to reinstate her claim and resume weekly compensation payments, and to pay her weekly compensation back to the date of the injury, on 13 June 2012, totalling \$84,797. Mr Cadenhead claimed that, pursuant to the agreement she had signed, he was entitled to be paid the full amount of the arrears the ACC had agreed to pay. He later agreed to reduce the fee to 50% of the back payment.

The law on payment of entitlements is quite clear. Section 123(1) of the Accident Compensation Act 2001 provides that all entitlements are absolutely inalienable. There are some, mainly statutory, exceptions set out in subsection (2). Section 124 provides that the Corporation must provide entitlements ONLY to the claimant. If there is a lawyer acting for the claimant, the ACC could pay the entitlement to the lawyer's trust account to be held in trust for the client. The lawyer would render a bill for services provided and seek the client's permission to use the money in the trust account to pay the fee. The lawyer would have no lien or charge on the funds and any complaint about the fee charged or the fee



being taken from the trust funds without the claimant's agreement, would be subject to a complaint to the New Zealand Law Society. If the lawyer had no trust account, the ACC acting pursuant to s 124, would have to pay the entitlement to the claimant and the lawyer would have to recover the fee under the same rights as any other creditor.

Advocates do not usually have trust accounts so cannot receive financial entitlements on behalf of a claimant. A payment by ACC to an advocate would prima facie be in breach of s 124. An advocate does not have the same responsibilities and duties to the court as a practising lawyer and advocates are not currently registered or subject to supervision or discipline by a governing body.

Agreements or contracts which allow a lawyer or advocate to be paid from compensation recovered as a result of mediation or litigation are not binding on the ACC by virtue of s 299 which prohibits contracting out of the Act. The ACC must follow the provisions of ss 123 and 124 and should not act on a request from the claimant to pay entitlements to anyone other than the claimant. Lawyers and advocates acting for an ACC claimant are not in a privileged position with regard to payment of fees. ■

Don Rennie ✉ rendon@actrix.gen.nz is convenor of the New Zealand Law Society's Accident Compensation Committee. He has worked for the ACC and in private practice and is widely published in the areas of accident compensation and personal injury.