

Redefining the Facts – Marginalising the Claimant?

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This chapter explores the nature of the facts that form the basis of decisions in administrative tribunals with particular reference to the review process that is built into the New Zealand accident compensation scheme. A popular image of administrative reviews and tribunals is that they are straightforward fact-finding bodies before which an applicant can appear without the need of legal assistance. The expert adjudicator is likely to ask the applicant questions to elicit all the relevant information and, perhaps, some arguments. The adjudicator then applies rules of law to the facts that emerge from the applicant's story. But within the Accident Compensation Corporation (ACC) review process, identifying simple 'brute' facts is no longer enough for claimants to win their case. Instead, the focus is on 'institutional' facts that are themselves the product of the law. The resulting legal complexity has consequences for the nature of the review process and has a particularly severe impact on unrepresented claimants, who may be left feeling misled, frustrated and disillusioned by a 'dispute resolution' process with which they cannot fully engage.

Certainly, initiating a review is simple in terms of the information provided to ACC claimants, the minimalism of the forms to be completed, the lack of a lodgement fee and the geographic spread of the hearings. However, claimants can find when they appear at a hearing that they are unable to set out their case sufficiently, because – as it seems to them – they are not 'speaking the same language' as the ACC case manager or representative, nor as the reviewer.¹ Indeed, what claimants consider as fact often falls short of what the legislation requires to be shown. Contrary to their expectations, unrepresented claimants may struggle to participate effectively in the proceedings. And this is despite the relatively informal setting and the inquisitorial powers of the reviewer.

¹ On difficulties caused by technical language and legal language in the courtroom, see C Kester, 'The Language of Law, the Sociology of Science and the Troubles of Translation: Defining the Proper Role for Scientific Evidence of Causation' (1995) 74 *Nebraska Law Review* 529.

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