

28 April 2016

Accident Compensation Appeals District Court Registry
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By email: tribunals@justice.govt.nz

Draft Guidelines to Practice and Procedure for Accident Compensation Appeals in the District Court

The New Zealand Law Society welcomes the opportunity to comment on the *Draft Guidelines to Practice and Procedure for Accident Compensation Appeals in the District Court* (draft guidelines). The Law Society sought input from the profession and from its ACC and Civil Litigation and Tribunals committees. The Law Society's comments are set out below (following the headings and section numbers in the draft guidelines).

1. Filing the Appeal

1.1 Notice of appeal

Although section 1.2 instructs appellants to attach a copy of the review decision, it is possible that some appellants (e.g. self-represented appellants) may think they are bringing an appeal against ACC's initial decision. Section 1.1 could be made more explicit, by being reworded to read: "An appellant brings an appeal against a reviewer's decision ...".

1.4 Filing of appeal

If only a signed original notice of appeal will be accepted for filing, this should be made explicit.

2. Representation

2.1 Authority to act

Lawyers should not have to produce an authority to act. Rule 5.40 of the District Court Rules already provides a warranty that a solicitor has authority.

2.2 Legal aid

Section 2.2 of the draft guidelines states that "A party who has applied for legal aid but whose application has not been granted stands in the same position as all other parties. A hearing will not be delayed solely on the ground that a legal aid application has not been determined".

The availability of legal aid funding is often an issue in ACC proceedings, and it would be appropriate for the delays that can be involved to be recognised by the court. It is inconsistent with the principles of access to justice to proceed to hear an appeal when a legal aid application has not been determined, and section 2.2 should be amended accordingly.

If section 2.2 as currently drafted is to remain, it should make clear whether or not legal aid delays will ever be accepted as a legitimate reason for filing submissions late. That may be what “solely” indicates, but more clarity would be helpful.

3. Getting the Appeal Ready for a Hearing

3.3. Submissions

It is very helpful to have the status of the review decision (for the purposes of the District Court appeal hearing) expressed so clearly in section 3.3 of the draft guidelines.

3.4 Evidence at appeal

The draft guidelines at 3.4 state that “Although a copy of the review file is provided by the Corporation to the Registry, because the issues at appeal are often different or have developed further since the review, the review file is not placed on the Court file as a matter of course”. This appears to be inconsistent with section 154 of the Accident Compensation Act 2001, which requires ACC to provide the record to the court.

Although the draft guidelines state that leave will usually be granted to call new evidence, the fact that leave is needed every time contributes to an imbalance between the appellant and ACC (by the time of the District Court hearing, ACC will seldom need to call more evidence, whereas the appellant will often need to do so). In practice the requirement for leave creates an additional barrier that is faced mainly by the appellant.

3.6 Reinstatement of an appeal

The word “appeals” (in the second line of section 3.6) should be changed to “applies for”, to prevent confusion.

3.7 Setting appeal down for a hearing

The second paragraph of section 3.7 could be more simply drafted to refer to the “claimant” and say the hearing will be set down in the court nearest the claimant. (Rather than as at present referring variously to appellant, applicant, and claimant).

4. Hearings

4.1 Procedure at the hearing

It would be helpful to have a statement added to section 4.1, along the following lines:

“At the hearing, the Judge can appoint a person to be an assessor if the Judge considers the appeal involves technical or specialist matters and considers an assessor with expert knowledge should be appointed (pursuant to section 157 of the Accident Compensation Act 2001).”

5. Challenging a judgment

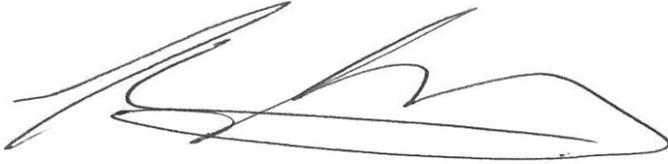
5.1 Leave to appeal

Footnote 11 contains a typographical error: no apostrophe is needed in “Inferior Court’s”.

Conclusion

This submission was prepared with assistance from the Law Society's ACC and Civil Litigation and Tribunals committees. If further discussion would assist, please do not hesitate to contact the Law Society's Law Reform Manager Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912).

Yours faithfully

A handwritten signature in black ink, appearing to be 'Kathryn Beck', written in a cursive style.

Kathryn Beck
President