

***“ Review of the way in
which Physiotherapy
Services are funded and
accredited by ACC ”***

Submissions of Val Forster

"All that men set their hearts on in life is vanity, corruption and trash; men are like scuffling puppies or quarrelsome children who are all smiles one minute and tears the next. Faith and decency, justice and truth, have fled 'up to Olympus from the wide wayed earth."

Marcus Aurelius, Meditations, c. 170 AD

The [Physiotherapy Endorsed Provider Network] **aims to reduce the number of treatments per claim through financial incentives on providers** to put in place the quality processes associated with a better treatment profile, and through incentives on consumers to choose accredited providers over non-accredited providers...

...patients and ACC would benefit if all providers would change to a similar treatment profile to that of NZPAS accredited providers (in this paper referred to as '**Best Practice**')

*Framework for Analysis of the Endorsed Provider Network,
New Zealand Institute of Economic Research
2002 AD*

[In order to allow the Corporation to achieve its objective of "fair levies," ACC Healthwise will] facilitate the provision of effective, appropriate rehabilitation and entitlements, **within the constraints of legislation, evidence based healthcare and best practice"**

*ACC Healthwise Objectives and Key Performance Indicators,
2002 AD*

Submission to the Physiotherapy Inquiry

This is the submission of:

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I wish for my son, Warren Forster to appear before the inquiry to give evidence and speak to this submission

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Structure: This Submission is structured in the following manner:

Background
Summary
Relevant Facts
Analysis and discussion of Systemic Issues

This submission is lodged by Warren Forster on the 9th of March 2007. We the undersigned, hereby provide express consent for the information contained in this submission and the information contained in its Annexes to be made available to the public. Furthermore, we believe that this information is in the public interest.

9 March 2007

9 March 2007

Warren Forster

Date

Valerie Forster

Date

“Rather than being merely an ‘arm’s length’ purchaser of services, ACC now has more effective direct control of the whole continuum of services and care for an injured person. This includes from the time they visit their doctor, or are picked up by an ambulance, through to helping them return to work readiness or independence”

ACC Annual Report, 2004, page 12

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PART I – INTRODUCTION

BACKGROUND

1. My mother had an accident on 4 August 2005; she slipped in the shower at her home in Whangarei. She suffered from an injury that was not identified at the time. This unidentified injury caused a sharp stabbing pain in her right hip/groin and pain radiating down her right leg. She was in constant agonising pain, and was forced to take debilitating medication, for **17 months**.
2. New Zealand has lost a valued citizen, who was a central part of her family and an involved and active member of her community. She is a person who had spent significant periods of her life representing New Zealand, but in her time of need, she was left wanting.
3. The New Zealand labour force has lost two people who each have over 35 years of experience.
4. Grant Lightfoot, Owner of Tri-Steel New Zealand lost his valued Office Manager and his business suffered as a consequence.
5. Rather than paying taxes and contributing to society, for more than 15 months, my parents struggled and my mother was made to feel like a burden on society.
6. The reason – the Corporation and then a reviewer contracted to their wholly owned subsidiary, Dispute Resolution Services Limited, refused to investigate the injury suffered in the accident, ignoring the recommendations of her treatment providers, including physiotherapist, and pressuring her Specialist to “reverse” his medical opinion because the history as it was presented to him seemed slightly different to a history which an ACC employee quoted to him as being the history elicited by another specialist in 1998. Of course, when the Corporation’s employee was asked to justify the statements attributed to the earlier specialist, they couldn’t and they subsequently admitted that they just assumed that is what he thought.
7. Instead of providing support, the Corporation told my mother to “*talk to WINZ*” and told me that “*the public health system is there for people like your mother*”. The Corporation’s staff acted illegally and irresponsibly as they went about covering up their mistakes.
8. The Minister for ACC reinforced ACC’s decisions and actions. The Minister for Health stated that it was purely an ACC matter and it would be inappropriate to comment. When my mother approached the Public Health system for support, she was told to contact ACC.

9. The Hon. Phil Heatley, MP, Member for Whangarei called the Branch Manager of the Whangarei Branch whilst Mrs Forster was in his office and was told “...*nothing you do or say will make us change our mind*”.

10. Amongst all of this, the Corporation made a decision to decline Physiotherapy, this submission focuses on this decision and the due process, which I subsequently followed with a reasonable expectation that my mother would have access to justice.

11. This Submission details the facts surrounding the decision to decline Physiotherapy and follows the actions and omissions of the Corporation, their subsidiaries, staff and agents as I set about trying to establish how this all went so wrong and remedy the situation.

12. The submission is broken into several parts. Part II details the facts and my conclusions relating to the decision to decline physiotherapy. Part III details the issues relating to access to justice. Part IV discusses the systems used by ACC and DRSL, which relate to the facts set out in Parts II and III.

13. **Summary of Issues**

PHYSIOTHERAPY AND THE CORPORATION’S DECISIONS

- My mother was receiving physiotherapy in the lead up to a planned operation; by 4th November 2005, she had received 12 treatments and the treatment provider was required to apply to ACC for additional treatments using an ACC32 form.
- My mother’s pre-operative physio treatment was terminated without reason, several weeks from her proposed operation.
- My mother’s physiotherapy treatment was terminated without her injury being identified, treated or rehabilitated to the maximum practicable extent, because the Corporation did not respond to the ACC 32 in a timely manner. The delay in response effectively resulted in her being denied physiotherapy treatment.
- My mother’s physiotherapist was forced to limit the number of times she was treated because she had to apply to ACC for ACC “approval” to keep treating her.
- The Physiotherapist was faced with a moral and ethical dilemma and she kept treating my mother for two weeks after the “approved treatment” hoping that the additional treatment would be approved. This was done knowing that my mother could not pay for the treatment if it was declined.

- ACC ignored the ACC 32 request for additional treatment for over 3 weeks, before making a decision, some 24 days later, to decline physiotherapy.
- In November 2005, I flew out from the UK to sort out the mess that ACC had created.
- Both my mother and I were told that ACC would not pay for any more physiotherapy treatments.
- I discussed this situation with ACC who denied that such occurred, and when I produced the evidence, the case manager and team manager stated that they had no knowledge of the situation and it wasn’t on the pathways file, which is false.

ACCESS TO JUSTICE REGARDING THE DECISION TO DECLINE PHYSIOTHERAPY

- I applied for a review of the decision and the hearing of this was delayed for many months, the decision became “*deemed*” pursuant to s. 146 of the IPRC Act.
- The hearing of this “*review*” was completely unacceptable and was not done in accordance with the Act. The Corporation and Dispute Resolution Services Limited falsified evidence in an attempt to defeat justice by stating that a deemed decision was not made.
- The Corporation falsified evidence in an attempt to state that the matter was the subject of an earlier review decision.
- The reviewer from Dispute Resolution Services Limited (DRSL) breached the principles of natural justice by hearing a case about DRSL causing delay. In addition to the Corporation having to pay for physiotherapy treatment, DRSL would have faced a \$75,000 fine, if the decision had been in favour of my mother. Therefore the reviewer who is contracted to DRSL went ahead and issued a decision that there was no jurisdiction to hear the case.
- When I lodged the Notice of Appeal in the District Court regarding the physiotherapy decision, the Manager of Legal Services at ACC attempted to combine the Appeals together and told the Court that they were wrong to hear the Appeal regarding Physiotherapy, instead stating it was part of another decision regarding an Individual Rehabilitation Plan.

ACTIONS TO ADDRESS THE SITUATION

14. I was required to make another trip from the United Kingdom to New Zealand with just 24 hours notice. When it became clear that my mother was not going to receive either justice or treatment in New Zealand, I arranged for her and my father to move to Australia in October 2006. Within weeks of arriving, she was receiving treatment and had undergone the relevant diagnostic tests. The condition, caused by her accident, was identified and treated with a NZ\$45 injection. Due to the fact that the injury was correctly

identified and treated, effective physiotherapy intervention was possible and my mother underwent an intensive rehabilitation programme, under the guidance of her physiotherapist. Her rehabilitation is going extremely well. She returned to part-time work on 27 Feb 2007.

WHAT IF ?

15. If the Corporation had investigated to the extent reasonably necessary to make a decision on the injury in August, September or October 2005, rather than spend tens of thousands of dollars covering up mistakes and defending an legally indefensible decision, which is clearly wrong, my mother could have been treated, continued to receive Physiotherapy and retained her job.

PART II – RELEVANT FACTS **THE DECISION TO DECLINE PHYSIOTHERAPY**

The Accident

16. On 4th August 2005, early in the morning, my mother was cleaning the shower at home in Whangarei. As she was doing this, she had an accident when she slipped in the shower. My mother crawled out of the shower and lay on the floor and screamed. My father came in from outside and helped her.

17. After spending some time in bed and taking some Panadol, my mother went to work. My father was worried about her and asked her brother, Tony to go and see her at work. When Tony arrived at her work, he realised that she was not well and he took her to see her doctor. Her doctor injected 100mg of Tramadol and 20mg of Tilcotil (opiate type drug for the pain and muscle relaxant) and sent her home [*Annex II*]. She returned to the doctor on Friday 5th August 2005 and was admitted to the Whangarei Base Hospital where she spent several days. [*Annex XX, pages 1 and 2*]. She was suffering from sharp stabbing pain in the right Hip/Groin that radiated down the lateral aspect of the right leg. This was the first time in her life that she had presented with these symptoms.

18. Mrs Forster’s GP, Dr Bjornholdt lodged an ACC 45 and on the 9th August 2005, ACC issued a letter to Mrs Forster, which stated that ACC accepted cover for the injury suffered on 4th August 2005. [*Annex I*]. This was an automatically generated letter in accordance with the ACC claims management procedure [*Annex IV*].

19. After some time, the pain and the drugs, which were required to control the pain, meant that my mother could no longer cope with working full time. Dr Bjornholdt referred Mrs Forster for Physiotherapy [*Annex III*]. She started receiving physiotherapy on Thursday 29th September 2005, from Vasantha Bjornholdt and Laura Richards at the Tui Medical Centre, 425 Mauna Road, Maunu, Whangarei.

20. The Corporation illegally stores and accesses all claimants’ personal information from an Oracle Real Application Cluster database (RAC). They use this information to determine the likelihood of a claim costing more than a certain amount (I believe that this is approx \$1,000). [*Annex IV*].

21. On 13 Oct 05, an RAC risk analysis was completed. The details of Mrs Forster’s claim were compared to people who had made a similar claim in the past and it was decided that the RAC

risk was high because the incapacity (*the time that Mrs Forster had been affected by the “injury”*) exceeded the MDA duration (*the time in which the Medical Disability Advisor, as Published by the Reed Group suggests that 90% of injuries are healed within*). Therefore the claim was “*identified as high risk*” and transferred to Whangarei Branch.

Treatment including Physiotherapy

22. My mother was receiving Physiotherapy Treatment. By early November, it had been “*decided*” that Mrs Forster had a longstanding Isthmic Spondylolisthesis and she suffered a further injury on 4th August 2005. Although this “*further injury*” had not been identified (*and would not be identified until December 2006 when Mrs Forster sought treatment in Australia*), Mr Lyon, an Orthopaedic Surgeon at Northland Orthopaedic Services Limited had determined that Mrs Forster required surgery.

23. Mrs Forster received physiotherapy treatment on 27 and 29 September; 4, 6, 11, 13, 18, 20, 25, 27 October; and the 1, 3 of November 2005. By Thursday 3rd November, my mother had received the 12 treatments, which are allowed by the Treatment Profiles used by ACC to constrain the provision of entitlements to claimants. This is in accordance with the Endorsed Provider Network Contract.

24. On 4th November 2005, Laura Richards, my mother’s physiotherapist filled in an ACC 32, Request for Pre-Approval of Treatment, ACC Endorsed Provider (ACC32 Number: M648087). The Physiotherapy practice then posted this ACC 32 to the Corporation.

25. *Page 2 of Annex V* is stamped as being received by the Northern Processing Centre. It appears that the ACC 32 was received on the 8 November 2005.

26. My mother received physiotherapy treatment on 8 November 2005 and again on 15 November 2005. These were “*additional treatments*” that were given whilst waiting for the ACC 32 to be approved. Approval usually takes a week to ten days. In total, Mrs Forster received 14 physiotherapy treatments before physiotherapy was stopped.

Why only 12 treatments?

27. In accordance with the “*Treatment Profiles*” developed and promulgated by ACC, and the *New Zealand Acute Low Back Pain Guide [Annex LI]*, which is not evidence based, consensus based or subject to consensus review [*Annex LII*], a person with a back injury is only entitled to 12 treatments, any more than this must

be pre-approved by ACC, otherwise ACC will refuse to pay for them.

28. I believe that the New Zealand Low Back Pain Guidelines are “*best practice*” guidelines developed by the Accident Compensation Corporation as part of a strategy to constrain the provision of entitlements (including physiotherapy treatment) to claimants in order to allow the Corporation to reduce expenditure and “set fair levies”. For a detailed discussion of this, please see **Part IV** of this submission.

Cover and other decisions

29. On 10 and 11 November 2005, ACC Case Manager, Holly Coppins made several decisions regarding cover and entitlements. These decisions were “checked by Janice Fallon”[*Annex XIII*], Team Manager and communicated to Mrs Forster in two letters, one dated 10 November and one dated 11 November.

30. The letter on 10 November was a decision to decline elective surgery and the decision of 11 November stated:

*"Cover therefore cannot be granted for **this accident**. The medical report from Mr Lyon stated that he agreed with the advice from Dr Graham Corbett with regards to declining both surgery and **cover**.*

This means that you are no longer entitled to support from ACC. ACC will suspend your entitlements to weekly compensation, transport to work, equipment and home help/attendant care from the 9/12/05.

31. It is important to note that this letter of 11 November did not include physiotherapy. Notwithstanding this, Pathways notes show that on 11 November, Mrs Forster’s case manager faxed to the taxi company, approval for Taxis to Physiotherapy to be provided until 9/12/05 [*Annex XIII, Page 104*]. No fax was sent to the Physiotherapist.

32. It was clear from my discussions with the Physiotherapy Clinic that they were never informed that ongoing physiotherapy treatment had been approved until 9 December 2005. There is no evidence which I have seen which supports the view that the Physiotherapist was informed that treatment had been approved until 9/12/05.

ACC 32 Received by ACC Northern Processing Centre

33. The Pathways notes, [*Annex XIII*] sets out on *page 98*, that this ACC 32 was registered by Sally Gordon, a Clinical Advisor with the Northern Processing centre on 14 November 2005. This

is 10 days after it was lodged. From the Pathways notes, it appears that Sally Gordon, Clinical Advisor attempted to contact Holly Coppins on 14 November 2005 and left a message. The notes set out that on the same day, Holly Coppins called Sally [Gordon (?)] and left a message that all entitlements cease on 9 December 2005.

34. It appears that Sally Gordon never received this message. It is clear from my discussions with the Tui Medical Centre and from the information contained in my first Statutory Declaration of 7 December 2005 [*Annex XI, Para 3*], that my mother discussed the situation with both Jackie (Office Manager) and Laura (Physiotherapist) and the Tui Medical Centre repeatedly contacted ACC to discuss what was happening with the request for pre-approval for Physiotherapy.

Physiotherapy Stops

35. It appears to me that Physiotherapy treatment ceased because of the implementation of ACC’s strategy to constrain the provision of entitlements to claimants to the limited number of treatments forced by ACC upon treatment providers in the form of “*treatment profiles*”. ACC funds physiotherapists and, according to these “*treatment profiles*”, which are referred to by the Corporation as “*best practice*,” funding only extends to 12 treatments. Beyond this the physiotherapist is forced to make an unacceptable choice: stop treatment; agree that if further treatments are not “approved” the Physio will not charge the patient; or, come to an agreement with the injured person that if ACC does not fund the further treatments, the patient must pay out of their own pocket. This system was developed by ACC to constrain the provision of entitlements to claimants [*Annexes XLIX – LV and Section 12 of Volume I of ACC Policy, Procedures and Systems, A Case Review.*] In this case, the system was certainly effective in constraining the provision of treatment to my mother.

36. It appears that the Corporation may have eventually paid for treatments 13 and 14 some time in December 2005, however it is clear that by 17 November 2005 that there was uncertainty in the mind of the Physiotherapist and Mrs Forster as to whether ACC would continue to fund treatment [*Annex XI, Para 3*]. Mrs Forster discussed the situation with her Physiotherapist and discussed with her the letter from ACC dated 11th November, which did not mention physiotherapy. The Practice Manager had contacted ACC on several occasions in an attempt to understand the situation. On 17 November 2005, because of the uncertainty from ACC and the inability of Mrs Forster to pay privately, as well as the ongoing risk to the clinic, it was decided that they could not continue with treatment. It appears to me that the Physiotherapist herself had taken the risk and continued to treat Mrs Forster for the 13th and 14th. She was under no obligation to

do this, it was a kind gesture made in the Spirit of the Act and within the ethics of the Profession.

37. I commend Laura Richards for continuing to provide physiotherapy treatment as part of an effort to effectively treat my mother. I can only imagine the moral and ethical dilemma in which she found herself. My mother in severe pain and needing treatment on one hand, and then a “Clinical Advisor” refusing to make a decision on the other. I can imagine that this process may not have been a pleasant one for my mother’s treatment providers.

Individual Rehabilitation Plan includes Physiotherapy

38. The Individual Rehabilitation Plan (IRP) that was sent to Mrs Forster on 22 November 2005 [Annex VI], which was purportedly decided upon on 22 November 2005 [Annex XIII], sets out that the Corporation will provide Physiotherapy until 9/12/05.

39. It appears that the case manager has assumed that physiotherapy will continue until 9/12/05 however at no stage were Mrs Forster or the physiotherapist informed of this.

40. Mrs Forster received this IRP the following week and was insulted that ACC had sent such an unacceptable IRP to her. Mrs Forster did not notice that the IRP included Physiotherapy up until 9/12/05. She lodged a review application with respect to this IRP and the review decision relating to this IRP was subsequently appealed to the District Court.

Corporation Declines Physiotherapy Treatment

41. On 28 November 2005, Sally Gordon, Clinical Advisor at the Corporation’s Northern Processing Centre decided to decline the ACC 32 request for Physiotherapy. She sent a letter to Mrs Forster [Annex VII].

42. Sally Gordon also sent a letter to Mrs Forster’s physiotherapist setting out that “*the causal link between the current condition and the covered injury has not been established.*” As I believe that Sally Gordon has never examined my mother, or taken any steps to identify either her covered injury or condition, I am unsure as to how she could have formed this professional opinion. I am also unsure as to whether or not her actions are consistent with the Code of Ethics [Annex IX].

43. The letter also stated, “ACC will fund the appropriate amount for the completion of the ACC 32.” From this it is clear that ACC pays Endorsed Provider Network physiotherapists for their time in filling out ACC 32 forms. Non-EPN providers are paid approximately half as much as EPN providers to fill in ACC

32 Forms. Although I understand that Non-EPN providers can charge a surcharge, I do not feel that their patients should have to pay a surcharge for physiotherapists to fill in forms!

44. I believe that Sally Gordon is a Physiotherapist who works for ACC as a Clinical Advisor. In order to clarify this, I wrote to Sally asking if she could please provide details of her position as well as her qualifications and also to advise whether she actually examined my mother [*Annex VIII*]. She did not respond to my requests.

45. If Sally is in fact a physiotherapist, she is subject to the Ethical Standards [*Annex IX*]. Although I accept that the physiotherapist – patient relationship would not be the same as the relationship between a treating physiotherapist and a patient, the Ethical Standards still apply to Sally Gordon.

46. It also appears to me that Sally Gordon did not examine my mother, speak to her physiotherapist or speak to her case manager before making her decision on 28 November 2005. From the notes on file, it appears that Sally delayed making a decision for some unknown reason and from the notes on pathway, it appears that she made this decision because “*see on pathway that all entitlements cease on 9.12.05 therefore have declined request for physio*”. It is interesting that although Sally Gordon acknowledged that all entitlements appear to continue until 9.12.05 she decided that physio would cease on 28 November.

47. It appears that Sally Gordon is a “Clinical Advisor”. A Clinician is a much-revered term for a medical professional who works directly with patients, rather than someone who works in research or administration. It appears clear to me that a clinical advisor, working in a processing centre making poor decisions about a patient’s treatment based on non-medical information is the antithesis of Clinical Advisor!

How Long Can ACC delay making a decision on Physiotherapy

48. The IPRC Act sets out at s.135 (2) (g) that “*in the case of a review application relating to a claim for entitlement, [the application can not] be made less than 21 days after the date the claim for entitlement is made.*” This has had the effect of making it acceptable for the Corporation to cause three-week delays in processing an ACC 32. To claimants, this means that once you have received your “*Treatment Profile*” treatments, you can be denied your entitlement to treatment for 3 weeks before the Corporation has to make a “decision”.

49. Prior to the IPRC Act 2001 coming into force in April 2002, I am lead to believe that the processing time for requests for additional physio treatments was 1 week. Since then, the

processing time has been extended to 3 weeks into line with the maximum possible delay prior to claimants lodging a review application. This is not in the best interests of rehabilitation.

My arrival in New Zealand in Late 2005 and my meeting with ACC

50. In November, I arrived in Whangarei from the UK to find my mother and father in a terrible state. It took me some time to get my head around the situation and on 7 December, I presented at the Whangarei Branch and asked to speak to the Case Manager. I was informed that the Case Manager was not available. Having expected such a response, I had prepared a letter for ACC [*Annex X*], which I also presented to my mother’s MP, Hon Phil Heatley, who had previously been involved in her case [*Annex XI, Para 1*].

51. My letter [*Annex X, page 1, bottom 3 paras*] addressed the fact that ACC had effectively cancelled physiotherapy by failing to respond to the ACC32, and when they did, they declined physiotherapy, whilst still purporting to provide “support” until 9/12/05. This was a classic left hand – right hand fallacy.

52. I explained the effects of these actions and omissions on my mother’s physical condition, and I further explained how the incompetence of the Corporation’s staff meant that my mother, who was in extreme pain, had received no treatment for three weeks and that WINZ would not support treatment until ACC stopped providing support. Furthermore, from the 9th December, it was doubtful that WINZ would assist with physio costs because they would only assist with Physiotherapy if she were currently undergoing Physio treatment – as physio had stopped 3 weeks earlier, they could not support it! [*Annex X*].

53. I met the Corporation’s Branch Medical Advisor, Team Manager and Case Manager on the afternoon of 7 December, and amongst other things, discussed physiotherapy. I produced a statutory declaration following this meeting and this is attached at *Annex XI*. The Corporation denied that they had cancelled physio and maintained that they had agreed to cover physio until 9/12/05. Sally Hume, Team Manager denied the facts that were presented to her and implied that I was mistaken and fabricating the information. Ms Hume denied that Physiotherapy had been cancelled by the Corporation and it was clear to me that she did not understand the case so in an effort to prevent further escalation, I produced the letter of 28 November 05 [*Annex VII*], declining physiotherapy. Ms Hume then apologised blaming an internal procedure and she suggested that the case manager was not informed of the decision. Not only was the Case Manager not informed, she had not looked at the claim file in the last 10 days.

54. Holly Coppins, Mrs Forster’s Case Manager then stated to me that she was not informed of the decision to decline entitlements to physiotherapy and she further stated that the decision to decline physiotherapy was not on Mrs Forster’s Pathway file [*see notes made by Holly on Claim details report*], *Annex XIII*]. Holly states on Pathways file on 8/12/05 that the following occurred on 7/12/05:

... 4) Discussed entitlement to physiotherapy - Warren provided a letter from a Sally Gordon (ACC) who declined further entitlement to Physiotherapy in November – Apologised and explained that this letter was not recorded on Val’s file, if it had been, I would have been able to reverse the decision because as I had explained to Val all entitlements are valid until 9/12/05.

5) We encouraged Warren to tell Val to seek a referral from her GP to see the Hospital Physio’s [sic] at no charge to herself, also encouraged to follow up surgery with Northland health.

55. There is no doubt that when Holly Coppins stated that the letter to decline Physiotherapy was not recorded on Val’s file, that the decision letter to decline physiotherapy along with the decision itself was recorded on pathways file. Furthermore, when Holly Coppins made these notes on Pathway, the three previous entries related to Physiotherapy. It must have been very clear to her that the statements made to me on 7/12 and recorded in Pathways on 8/12 were untrue [*Annex XIII, Page 96*].

56. I believe that the way in which ACC staff made decisions with regard to physiotherapy and the way in which they treated me, when I explained to them their serious mistakes and how these impacted upon my mother, was completely unacceptable [*Annex XI, Para 3 and 4*]. My concerns were dismissed and a Team Manager who had a poor knowledge of the case attacked my character and integrity. Rather than admit mistakes and fix them, the first reaction of the manager was to cover up the mistakes. Furthermore, ACC staff provided excuses for their actions, which they knew to be false.

The Injury

57. During this period, the Corporation was presenting to the public and to the Minister that its role was “to provide 24 hour, no fault, accident insurance cover.” For a detailed analysis of this, please see section 11 of *ACC Legislation, Policy, Procedures and Systems, A case Review*.

58. Notwithstanding the systemic failure of the Corporation to make good decisions regarding physiotherapy in a timely manner as required by s. 54 of the IPRC Act, ACC’s logic for not providing Physiotherapy relates expressly to their decision to decline “cover for the accident.”

59. There was no doubt that on 7 December 2005, the Corporation was clear that it had declined cover i.e. their decision of 11 November 2005 was a decision to revoke their decision of 9 August 2005 to accept cover, and replace it with **a decision to totally decline cover**. This is confirmed by my Statutory Declarations [*Annex XI and XII*], Pathways Notes [*Annex XIII, page 95*], and most importantly the decision is confirmed on the Cover Status History [*Annex XIII, p5*]. It is clear that Holly Coppins and Sally Hume both “tidied up” the cover decision and recorded it on Pathway as “total declinature”.

60. The Act requires that prior to making a decision on Cover, the Corporation must investigate to the extent reasonably necessary to make a decision. During the meeting on 7 December, I attempted to clarify who is delegated the authority of investigating to the extent reasonably necessary to make a decision. The Branch Medical Advisor had made statements, which were completely unacceptable, and presented to me that the Case Manager, in fact, makes the decisions [*Annex XII*]. Section 7 of the Corporations Delegations Manual, which sets out the authority as delegated by the ACC Minister and ACC Board should provide clarity on this issue.

61. The Branch Medical Advisor (BMA), Team Manager and Case Manager all denied responsibility for identifying the injury and led me to believe that if I wanted “cover” to be accepted, I would have to get a doctor to make a statement or ask another question and then the Case Manager could ask the BMA to ask another question [*Annex XII, Para 4-10*].

62. The ACC Branch determined that it was reasonable to decline cover for an accident and an injury without first identifying the injury that was suffered in the accident. For a detailed discussion of the concepts surrounding a “*diagnosis of pain*” and the course of action which the Corporation follows if an injury is not “*Clinically Identifiable*” see Section 12 of Volume I of: *ACC Legislation, Policy, Procedures and Systems, A Case Review*.

63. Put simply, ACC does not accept a diagnosis of pain. **Every other modern healthcare system in the developed world uses an evidence-based model of diagnosing pain.** These systems accept a diagnosis of “Acute Low Back Pain” and “Chronic Low Back Pain.” The Accident Compensation Corporation does not. They have resisted moves to this diagnosis, because accepting a diagnosis of “Acute Low Back Pain” will force them to accept cover for “Chronic Low Back Pain” after 13 weeks (the only difference between the two “injuries” duration of symptoms). Because ACC’s business plan relies upon exiting claimants with back pain, ACC continues to misuse the outdated “Read Code” system of diagnosis, and the “injuries” of “*Back Sprain*” and “*Back Strain*.”

64. This measure, when combined with MDA duration exit targets forced upon branches as part of their Branch Level Key Performance Indicators, the strategies used to “*Change Provider Behaviour*” including “*Report Cards*” and farraginous “*fraud investigations*”, and the unwillingness of the Corporation to investigate to the extent reasonably necessary to identify the injury; results in the fallacious reasoning of “*the injury cannot be identified on two dimensional X-Rays or MRI Scans and therefore there is no injury.*”

Letter from Val Forster’s Treating Doctor

65. On 8 December 2005, Dr Bjornholdt, my mother’s GP wrote to the Corporation setting out that they had been mistaken by constantly referring to the injury as sciatica and that further investigation was required to identify the injury. Dr Bjornholdt was clear that ACC is responsible for covering the cost, and facilitating the process of determining the cause of the symptoms and in this case, ACC has not done this. Dr Bjornholdt recommended that cover be extended whilst further investigation took place [*Annex XIV, page 1*]. Attached to this letter was a revised ACC45, which was received by ACC several times. It was originally faxed to Hamilton on 13 October 2005 at around 14:00, it was received by Whangarei ACC Branch on 17 October 2005 and again by Whangarei Branch on 8 December 2005 when I took it in myself and insisted it was date stamped and passed to the Case Manager [*Annex XIV, Page 2, details of fax and twice stamped as received*]. Despite that fact that this information was explained to the Corporation on several occasions, it has been totally ignored at every level. It has still not been updated on Mrs Forster’s file. Compare the “injury” on file [*Annex XIII, Page 8*] and the “injury” in the letter from Dr Bjornholdt [*Annex XIV, Page 1 and 2*].

66. This letter from Dr Bjornholdt was received by the Corporation prior to the Corporation sending the file to DRSL, Mr Orange (*Reviewer*) and Mr Tui (*Barrister and Solicitor who prepared ACC’s Case*) [*Annex XIII, Page 94*], however it appears that it was deliberately not included in the file to DRSL and not received by the reviewer until 14 Dec 2005 when I provided it to the review hearing. ACC is required to provide all information in its possession to DRSL [*Annex XXIX, Schedule 6, Para 7*]. The comments made by ACC when I provided it to the review are set out in an incomplete and unreliable manner in the Transcript of the review hearing [*Annex XXI, Page 24 and 25*].

67. Sally Hume, Team Manager denied that the Corporation received the letter. The reviewer is heard to state that he does not have this letter and after I asked why the reviewer hadn’t received it, whether there had been a mistake in copying the letter, Holly Coppins stated to the review hearing “[the letter] was received after I sent the file to [the reviewer]”. This statement was

deliberately false. Sally Hume then asked Holly, “When did you get it, Friday?” Holly responded, “Yes”.

68. It appeared to me that Holly and Sally were misleading the hearing in an attempt to cover up the fact that the letter was deliberately left out of the file for the reviewer, so I asked Holly “Thursday or Friday?” Holly did not respond to my question.

69. At the time I was, and I continue to be, disappointed that the Corporation deliberately and deceitfully failed to include this very relevant letter in the bundle of documents for the review.

Case Conference

70. Why was a case conference not offered? Early December would have been the perfect time for this. It would have provided an informal setting for my mother’s treatment providers, GP, Specialist and Physiotherapist to discuss the case with my mother and ACC where the focus is on my mother’s medical welfare, rather than on legal outcomes. This would have been consistent with the **Spirit of the Act**, the social contract and my requests set out in my letter to ACC of 7 December 2005 [*Annex X*]. ACC’s decision to send this case into the legal route was a decision to send my family into a quagmire, which would only be remedied by my intervention and removal of them from New Zealand some 11 months later.

PREPARATION FOR THE JUDICIAL PROCESS

71. This is **relevant to Physiotherapy Treatment** as the fact that **ACC declined cover** is the very basis on which **Treatment was declined**.

Lodging review application

72. On 9th December 2005, I lodged a review application with the Corporation to review the decision of 11 November 2005, to **decline cover and entitlements** [*Annex XV*]. I stated that I disagreed with the medical conclusions and how these were applied to the decision [*Annex XV, page 2*]. This was processed by the review unit and received back at Whangarei on 13 December 2005 [*Annex XVI*].

73. I am not sure whether the review application was provided to DRSL however Aisha Dean sent a letter to me setting out that the issue was “cessation of entitlements” [*Annex XVII*]. This letter was posted, so was not received prior to me preparing the review submissions.

Administrative Review

74. The Corporation requires its staff to conduct an administrative review. This process was signed off by Rachel Green (now Rachel Terry) and Sally Hume on 8th December, prior to the application for review being received by ACC [*Annex XVIII*]. This admin review was not sent to Review Unit until 15 December [*Annex XVIII*]. This after the review hearing had been completed and the decisions secretly changed by ACC.

75. My father, Brent Forster wrote a letter to whom it may concern [*Annex XIX*]. Paragraphs 6, 7 and 8 set out how the Corporation’s actions and omissions have impacted on his life.

76. My mother wrote a statutory declaration [*Annex XX*] which includes details of exactly what happened in the accident [*pages 1 and 2*] and her experiences and interactions with ACC and how these have impacted upon her and her treatment [*Pages 3-7*].

ACC Instructs Dane Tui, Barrister and Solicitor to prepare ACC’s Case

77. On 8th December, the Corporation decided to instruct Mr **Dane Tui**, Barrister and Solicitor of Auckland to prepare the defence for the Corporation. It appears from Pathway [*Annex XIII, Page 94*] that both Holly Coppins and Sally Hume were aware of this. A copy of the file was sent to him in the late afternoon of 8 December.

78. At no stage was I informed that the Corporation had instructed a very experienced defence Barrister to prepare their case. This information was withheld from me until mid 2006 when I found a file note to that effect. At the same time as ACC was instructing counsel and bringing the review forward by five days from 19th December to Wednesday 14th December, they were telling me that I don’t need a lawyer and the review hearing was an informal opportunity to meet and discuss the issue. The review process is purportedly designed to take the place of a formal tribunal however instead of being legalistic and adversarial, it is meant to be conducted in an informal manner with the reviewer taking an investigative approach.

79. Sally Hume’s name appears on the review submissions and she led me to believe that she had written them [*Annex XXXV*].

ACC Totally Declines Cover

80. On 9th December, Holly Coppins, Case Manager reviewed the Cover Status and updated this cover status to Total Declinature [*Annex XIII, Page 5*]. There is no doubt that in Holly Coppins’ mind, ACC had declined cover.

81. On 13 December, the day before the review hearing, Sally Hume, Team Manager reviewed the “Cover Status” and agreed the cover had been declined [*Annex XIII, Page 5*]. There is no doubt that in Sally Hume’s mind, ACC had declined cover for the accident that took place on 4 August 2005.

Sally Hume appears to have met with John Orange

82. It appears that the “*file couriered to DRSL*” did not make it and for some reason was still at ACC’s Whangarei Office on Friday morning. I spoke to Aisha Dean at DRSL who threatened to cancel the hearing as the file will not get to the reviewer in time, I offered to drive the file to Auckland to DRSL offices myself. Aisha rang back and told me the problem had been sorted out. It wasn’t until some months later, I noticed on the notes made on pathway [*Annex XIII, Page 94*] which lead me to believe that on the evening of Monday 12th December 2005, Sally Hume personally delivered the file to John Orange, the reviewer. I am very suspicious as to what was discussed in the meeting when John met Sally.

83. Furthermore, the note on Pathway [*Annex XIII, Page 91*] sets out that:

"Activity log entry with activity date of 13/12/2005 04:27:00 reallocated from case P2604901688 by Sally Hume ()."*

84. I phoned Mr Barry Davis, Branch Manager of Whangarei and asked him to explain this. He spoke to Sally Hume on 8/3/2007 and informed me that this system generated Pathways Entry occurred because Sally removed “draft submissions” from Pathway. I asked him what the 04:27 meant and he did not know. He further stated that Sally had run through it with him and it was nothing sinister.

85. I vividly recall Sally’s appearance on the afternoon of Tuesday 13th December 2005, when I met her. She looked pale and exhausted.

86. Although the “Activity Log Entry” which was removed from the system may be nothing, it appears that the 04:27 noted on the file means 04:27am on the morning of 13th December. If Sally Hume delivered the file to John Orange on the night of Monday 12th December, to his rural residence, which is a significant distance from Whangarei, and returned that evening it would have been quite a late night. It would appear that the Submissions which were being prepared by Dane Tui, were not ready to be delivered to ACC on Monday Night and it was not until Tuesday when these Submissions were finished. This still

leaves the question of what was Sally Hume doing at work at 4.30am?

87. Advice from the Office of the ACC CEO is that Branch Staff cannot access Pathway records from home. This means that although the information contained in the “draft submissions” which were removed by Sally Hume apparently contained “nothing sinister” however it is still unusual behaviour for a Team Manager to be at an ACC Branch writing draft submissions at 04:30 am.

THE REVIEW HEARING

Background to the Transcript of the hearing

88. The following notes relate to a review hearing that was held on 14 December 2005 in Whangarei. This is relevant for two reasons. Firstly, cover is required before a claimant can establish an entitlement to treatment. Secondly, during this hearing I made submissions regarding the scope of the letter of 11 November 2005 and how the letter of 11 November 2005 did not include Physiotherapy. These submissions were removed from the Record of the Hearing.

89. The “*Official Transcript*” of the review hearing is attached at *Annex XXI*. Contrary to legal requirements, it was not certified and verified as being a true and accurate record of the hearing by the reviewer. Instead Mr John Orange taped the hearing on an Olympus digital recording device. It appears that Dispute Resolution Services Limited (DRSL) held this digital recording and in Jan 2006, a digital recording was purportedly sent by DRSL to Wordwave [*Annex XXII*]. Wordwave is a Christchurch based wing of a UK company that specialises in providing written transcripts from digital forms. They in turn sent a recording to a Mrs Maggie Keeve of Eighty Eight Valley Road, Wakefield. Mrs Maggie Keeves produced a record of transcript from the audio recording that had been supplied to her by her employer, in accordance with the Contract between her employer and DRSL. Mrs Keeves verified and certified that “*to the best of my endeavours I believe that the attached transcript is a true and accurate record of the proceedings in this review [Annex XXI, page 54]*” and signed the declaration in Nelson on 30th Jan 2006.

90. This *Official Transcript* of the hearing contains over 300 mistakes, including conversations between parties that have been removed and sentences that have been removed. I have underlined each of the mistakes in the transcript. Whilst the accuracy of the transcript provided is in dispute, I have reason to believe that **the audio recording which Mrs Keeves used to create the transcript**, which was certified as being a true and accurate

record of the proceedings, **is a different audio recording to that which was taken by Mr John Orange on 14 December 2005.** I am aware of other instances where the audio recording taken from a hearing has been altered and have reason to believe that this audio recording was also altered.

91. I have requested to ACC, DRSL and the Reviewer, Mr Orange, that they provide the original audio record along with the E-Works notes which outline the chain of events, however they have all refused to supply this information to me. I have asked the Court to order disclosure and the Court has asked me to await the final provision of additional information before we move ahead with a directions hearing.

Comments regarding cover

92. At the beginning of the hearing, Mr Orange, reviewer stated that the issue was the “decision of 11 November declining the claim for cover and request for elective surgery costs [Page 1].

93. Ms Hume, then attempted to divert the hearing to ACC’s decision of 10 November to decline surgery [Page 2].

94. I set out to the hearing that the issue was one of “Cover” [Page 8 and 9]. Sally Hume then repeatedly stated that the Corporation never “went back and revoked cover” [Page 10] and “we didn’t revoke cover, that was never the intention” [Page 11]. Additional statements have been altered, on page 14 and where Sally Hume states “the decision does not relate to cover” has been removed from the record of transcript and on page 15 where Sally Hume states “it was never cover. Cover was–” has not been accurately recorded. These statements of fact, given as evidence to the hearing by Sally Hume, are completely false and intended to mislead the hearing. The day before, Sally Hume checked the cover status decision made by Holly Coppins and confirmed that there had been a total declinature of cover [Annex XIII, Page 5]. Notwithstanding the fact that this “total declinature” of cover was withheld from the review hearing, denying me the opportunity to make submission, **Sally Hume had lied to the hearing in order to pervert the course of justice.** In order to defeat justice regarding the issue of whether or not a cover decision was made, the following morning (15th December) Holly Coppins went back and changed the cover status to “accept” [Annex XIII, page 5]. But for this cover status history function of pathway, there would be no evidence that this serious crime had been committed.

95. It is important to note that the reason that Sally Hume made these false statements probably related to s. 65 (1) and s.145 (2) of the IPRC Act. Section 145 (2) relates to the substance of review decisions – it sets out

“However, on the review of a decision revised by the Corporation under section 65(1), the Corporation must establish that the decision revised under that subsection was made in error.”

96. This amendment was part of the 2001 legislation and instigated by Sue Bradford of the Green Party. The purpose for the change, as set out in *Hansard* is to switch the *Onus of Proof* to the Corporation e.g. rather than an injured person having to prove that an injury was suffered in the accident, the Corporation would have to prove that the injury was not suffered in the accident.

97. The Act very clearly differentiates between Cover and Entitlements. However it appears that ACC policy and procedures have not espoused this concept. The other possible motives for not wanting to review the issue of cover are:

- i. ACC had not prepared submissions relating to cover. Their submissions related to their decision to decline surgery. ACC had prepared submissions for the wrong decision i.e. the decision of 10 November.
- ii. Cover decisions are subject to s. 56, which requires an investigation to the extent reasonably necessary to make a decision. Entitlement decision do not have such strict statutory requirements, they are only subject to s. 54 and 134 (1) (b).

My Submission that this decision letter that is being reviewed does not include physiotherapy

98. **The submission I made relating to Physiotherapy** not being part of the decision of 11 November (and therefore not subject to this review) **was illegally removed from the record of the hearing**. On page 13 of the transcript, I expressly stated to the review that the decision of 11 November included a number of things “but not including physio”. This statement had been removed from the transcript of the hearing [*Annex XXI, Page 13*]. Someone has altered the record of what went on at the hearing and removed my statement where I expressly state that the physiotherapy decision was not included in the decision of 11 November 2005, I was interrupted by the reviewer who then chastised me for focusing on errors in ACC’s decision!

Reviewers Actions

99. The reviewer **ignored my review application and my submissions** and **decided that the issue** he would be addressing was **not one of cover** but **one of a causal nexus between the accident in August and my mother’s need for surgery**, which was the issue of the letter of 10 November, not the letter of 11 November!

100. Mr Orange, the reviewer then stated that “*the matter I will be looking at is whether your mother’s need for surgery is due to*

a personal injury that she sustained [words missing from the transcript] in August [Page 13]. Furthermore, at page 18, he is recorded as stating “...the matter that I will be looking at is [words missing] whether theres [sic] a causal link between the need for your mothers surgery and the injury she sustained in August.

101. Halfway through the review hearing, the reviewer informed me that he would not be hearing the decision of 11 November 2005 and instead would be hearing an issue of the decision of 10 November 2005. I was told not to explain ACC’s mistakes and that it is irrelevant whether or not ACC followed the procedures as set out in the Act, and in particular s.56 because the reviewer was required to look at the matter afresh [Page 13-19].

102. From that, I understood that the decision of ACC must be put aside so I then asked Mr Orange whether **he** needs to investigate the injury as required by s. 56 i.e. to the extent reasonably necessary to make a decision. I also asked him whether he is required to make a decision under the Act and at this stage he got very defensive. [Page 17 and 18]. Mr Orange was clear at that point that he was only interested in reviewing the issue of entitlement to surgery. It certainly appears that Mr Orange decided not to hear the issue regarding cover.

103. I was intrigued why this was the case, however upon receipt some months later of the Contract between ACC and DRSL [Annex XXIX] and DRSL and Mr Orange [Annex XXX], and having gained an understanding of the processes used by ACC Review Unit, DRSL, Co-ordinating reviewers and Reviewers; it was clear to me that ACC had requested Mr Orange to provide an “X-28” review on Elective Surgery and Causation [Annex XXIX, Page 23] and the purpose of Mr Orange’s contract with DRSL [Annex XXX, Page 13] is to earn revenue for DRSL by undertaking review hearings and issuing review decisions.

104. I had previously requested during my meeting on 7 December, for ACC to fund Bone Scans. I raised this issue again at review, where I suggested that Bone Scans would help determine the cause of the symptoms [Annex P, Page 33] and again I was ignored. This is relevant because it was a Bone Scan, conducted in December 2006, which finally identified the injury that had caused the symptoms and incapacity from August 2005 until March 2007.

105. Following the hearing, I felt that I had raised enough issues that there could be no choice but to properly investigate my mother’s injuries. I flew to Australia for the weekend and then home to the UK for Christmas.

106. On 19 December 2005, Mr Orange issued a decision that ACC’s decision to decline cover and entitlements was correct.

PART III – RELEVANT FACTS
CHALLENGING THE PHYSIOTHERAPY DECISION

Why is this relevant to the inquiry into Physiotherapy Services?

107. Part 5 of the Injury Prevention, Rehabilitation and Compensation Act 2001, prescribed the due process that Claimants must follow if they are not satisfied with a decision that the Corporation has made regarding physiotherapy. The process is known as a “review”. **The following facts set out what happened when I followed this statutory process, from lodging the initial review application, through to the District Court Appeal.**

Summary of Background as detailed above in Part I

108. On the 11 November 2005, Holly Coppins made a decision and sent this decision to the claimant in a letter entitled “Entitlement Decision” [*Annex XL Exhibit 1*].

109. This decision did not discuss what would happen to the claimant’s treatment, in particular “physiotherapy” from the date of the letter, up until the date at which ACC purported that it would suspend and/or decline cover and entitlements.

110. On 4 November, the claimant’s physiotherapist, Laura Richards had requested a further 8 treatments so as to ensure that the claimant continued to receive physiotherapy up until her surgery. Sally Gordon, ACC Clinical Advisor made notes referring to this claim for the entitlement of treatment on 14 November 2005.

111. It appears from the notes on Pathway that on the 14 November 2005, Sally Gordon rang Holly Coppins to discuss this, but Holly was not available. Sally appears to have left a message on Holly’s voice mail. The pathway notes show that Holly then rang Sally back and left a voice mail message that all entitlements ceased on 9 December 2005.

112. The Pathway notes do not show any notes regarding physiotherapy between 14 November and 28 November 2005. On 28 November 2005, apparently having not received the Voice Message left by Holly Coppins on 14 November 2005, Sally Gordon made the following notes on Pathway:

See on pathway that all entitlements cease on 9.12.05 therefore have declined request for physio. Send out decline letter.

113. Sally Gordon sent a letter to the Claimant declining the claimant’s claim to Physiotherapy Treatment [*Annex VII* and *Annex XL Exhibit 2*]. This letter referred to a decision declining a claim for entitlements. The last paragraph of this letter states:

If you have any queries about this decision, please contact me. If you are still not satisfied, you can ask for an independent review of our decision. The review process is outlined in the enclosed Working Together fact sheet.

114. After arriving in Whangarei, I met with the ACC Whangarei Branch. My letter to them, and the notes I made during the resulting meetings are explained in detail in Part I and are available in *Annexes X - XII*.

115. Following our meeting on 7 December 2005, Holly Coppins noted on Pathway [*Annex XIII*]:

"FF with Warren Forster (son), Graham Corbett (BMA), Sally Hume (TM) and myself.

1) in-depth discussion re cover and entitlements lasting approximately 1.5 hrs

...

4) discussed entitlement to physiotherapy – Warren provided a letter from a Sally Gordon (ACC) who declined further entitlements to Physiotherapy in November – apologised and explained that this letter was not recorded on Val’s file, if it had been I would have been able to reverse the decision because I had explained to Val that all entitlements are Valid until 9/12/05...

116. This entry made by Holly Coppins completely contradicts the evidence, which was already on file.

117. When the my mother read this, she became very distressed.

118. I recall explaining to the ACC staff, and the WINZ staff the pain, suffering and damages that were caused by the cessation of the claimant’s physiotherapy.

119. The review hearing, which was held on 14 December 2005, related to the decision of the Corporation to decline cover and entitlements. It did not relate to the decision regarding physiotherapy. **I specifically stated to the hearing that the**

scope of the decision of 11 November did not include physiotherapy. The Reviewer, interrupted my submissions and this part of my submissions was deleted from the record of hearing either by John Orange, Wordwave, the transcriber, or an unknown third party who edited the audio recording during this process.

REVIEW OF THE PHYSIOTHERAPY DECISION

Lodging the Review Application

120. Part 5 of the Injury Prevention, Rehabilitation and Compensation Act 2001, sets out the process Parliament intended to be followed in resolving disputes arising from the Act. Section 134 and 135 set out the process for lodging a review application. The following paragraphs relate to the lodging of and processing of the **review application in relation to ACC’s decision of 28 November to decline physiotherapy.**

121. On 27 Feb 2006, as I was still in the UK, my mother followed my instructions and lodged a review application [*Annex XL, Exhibit 3*] for ACC’s decision of 28 November to decline physiotherapy. This was received by ACC on 27 Feb 2006. The ACC Review Unit received it on 1 March 2006 and they assigned three numbers to the review application. “Z-1”, (22) and 44669 [*Annex XL, Exhibit 4*].

122. Z-1 refers to the type of decision required. As set out in the contract between ACC and DRSL [*Annex XXIX, page 24*], this is a review relating to the Physical Treatment Regulations, Schedule 1, Clause 1 – 6.

123. The Corporation has many business units, which are each allocated a number. “(22)” denotes the office to whom the Review Unit sent the application for review, in this case it was sent to Office 22, known as the Northern Processing Centre. This was the organization that made the original decision.

124. 44669 was the review application number.

125. On 1 March 2006, Amanda Hodges of the Corporation’s Review Unit wrote to Mrs Forster [*Annex XL, Exhibit 5*]. This letter set out, in part, that the Corporation must set down a date to hear the review within 3 months.

Processing the Physiotherapy Review Application

126. Both the Whangarei Branch (Office 48) of the Corporation, along with the Northern Processing Unit (Office 22), were “processing” review applications.

127. On the 21 March 2006, it appears that Sally Gordon from “Office 22” spoke to Holly Coppins and according to the contemporaneous notes,

"Spoke to Holly Coppins, CM.

She advises that there is no date set yet for Mrs Forsters' appeal

Holly reports that Mrs Forster reviewed ACC's decision to decline all entitlements and she lost this review and then asked it to be taken to appeal

In the meantime while waiting for the appeal she has lodged 3 more reviews, one for IRP, one for a decision on 15/12/05 and Holly can't recall the third

Holly said she has requested the adjournment of these reviews until the appeal decision has been made

D/w Jan Roper as to the best course of action for declining further physiotherapy

128. It appears that the “appeal” referred to is AI-36/06, the pending appeal to review number 43478 (Review Decision dated 19 December). It appears that Sally Gordon then rang Tanya Cosgrove at DRSL. The relevant information regarding this communication appears to be missing from the Pathway file [Annex XIII]. It is also missing from E-Works, DRSL’s equivalent where this information should have been stored in accordance with the para 3.8 of the Service Agreement between ACC and DRSL [Annex XXIX].

129. It is clear that Sally Gordon also discussed with Jan Roper, the best course of action for declining further physiotherapy. It appears that Jan Roper is an employee of the Corporation, perhaps a Team Manager within the Northern Processing centre, however I am unsure. I believe that Jan Roper has had some formal training as a nurse, however I do not believe that she has had any training as a doctor or physiotherapist. **I am dismayed that rather than assess need for Physiotherapy, the Corporation is discussing the best course of action for**

declining further treatment. This is a sign of **the culture**, which exists within the **Accident Compensation Corporation.**

ACC decides that it will be cheaper to go to mediation and asks DRSL to adjourn the review hearings until the Appeal AI-36/06 has been heard

130. It is clear that ACC was not happy with the fact that Mrs Forster had lodged several additional reviews.

131. On 9 March 2006, [*Annex XIII, page 81*] unbeknownst to my mother and me, Holly Coppins wrote to DRSL requesting DRSL to consider this case for mediation and to estimate costs for mediation. If the cost is less than \$ 1,000, DRSL is to go ahead, and if the estimated cost was more than \$ 1,000, DRSL is to advise Holly Coppins and a submission would be made to the Branch Manager for Signoff.

132. It appears from the information provided by DRSL under the Privacy Act and from references made in notes on Pathway that the ACC Branch and DRSL discussed mediation and/or adjournment between 9 March 2006 and 21 March 2006 however this information has been withheld from the claimant.

133. On 21 March 2006, *Annex XIII* records at Page 80, that Sally Gordon spoke to Holly Coppins and “*Holly said she has requested adjournment of these reviews until the appeal decision has been made.*”

134. Also on 21 March, Sally Gordon made another note on Pathways, it appears that Sally had spoken to Jan Roper and then rang Holly back. The note states

*Rang and left message with Holly.
Need to ask if a decision has been made re mediation, have all files been sent to DRSL
? Participate in mediation or adjournment.
Ring Tanya Cosgrove.*

REVIEW APPLICATION – PHYSIO – SENT TO DRSL

135. On 22 March, Rachel Green wrote to the claimant stating that ACC has decided not to change its decision [*Annex XL*,

Exhibit 6], and therefore the Corporation has passed the review to DRSL for assignment of an independent reviewer. It appears from the choice of letter used by Rachel Green that the Corporation believed that this was a Valid Application for review as a different “form letter” is used if the Corporation does not believe that this is a valid application for review (See for example letter of 4 April 2006).

136. Some communication occurred between the Corporation, DRSL and the Claimant regarding mediation and review hearings. To understand this further, please see *Annexes XXXII – XXXIV*, which are affidavits presented at the pre-hearing on 9 August 2006.

137. By July 2006, no hearing had been set for the issue regarding physiotherapy. It appears from the notes that ACC thought DRSL was setting a hearing and DRSL thought ACC was deciding whether or not to go ahead with Mediation.

138. On 11 July, ACC Contacted DRSL asking, “has a date been set for a hearing for [Mrs Forster’s review] yet?” [*Annex XXIII, page 34*], DRSL replied “not yet, having some difficulty, will keep you informed” [*Annex XL, Exhibit 7 and Annex XXIII, Page 34*]. It is clear from this communication that ACC had been expecting DRSL to set a hearing date.

139. It appears that in an attempt to cover up the mistake, Miriam Vance stated in her advice to the Ian Pickersgill, Acting Chief Complaints Investigator, ACC, on 27 July that, “*I phoned Mrs Forster on 14 July 2006 to advise that ACC would prefer to proceed to **mediation** in light of her mediation conditions.*”

140. Thus it would appear that ACC would prefer mediation rather than reviews. This is certainly not what was offered to me in the email which I received from Miriam Vance who was clear that the review applications were to be set down to be heard [*Annex XXIII, Page 34*].

Calling my mother

141. In late May and early June, both Aisha Dean and Miriam Vance received an email from my mother. The email was written to Aisha and forwarded to Mike Dunn who responded and forwarded it to Whangarei where it arrived on 1 June 06. [*Annex XXVIII, Pages 6-7*]. This letter clearly sets out at Para 13:

"13. We require from now on [that] any matters associated with mediation or review be put in writing, either by email or post. I have no wish to take telephone calls from ACC or DRSL. It is upsetting myself and my husband to much, and the toll the matter is taking on my relationship with my husband is unacceptable. Also, the level of medication I need to manage the constant pain I am in ensures I have great difficulty remembering what is said to me on the phone and also making sensible and well-reasoned responses whilst discussing matters with anyone.

142. When Miriam wrote to Ian Pickersgill she quoted the first three lines and omitted the reasoning [*Annex XXIII*].

143. Notwithstanding that the Corporation and DRSL had been repeatedly informed not to call my mother, and Aisha Dean and Miriam Vance received this notification, on 14th July 2006, first Aisha and then Miriam Vance called my mother. Aisha quoted my mother as stating she was waiting for ACC to get back to her about mediation. It appears that Aisha then rang Miriam who in turn called my mother. If we believe the notes provided by Miriam it was to go ahead with mediation, however I struggle to believe that this was ever the intention. My mother told both of them to communicate with me.

144. From the 14 July – 17 July, Miriam Vance, Aisha Dean and Murray Carter communicated, [*Annex XXXII and XXXIII*]

145. On 17 July 2006, the Corporation received a letter from me stating that the review applications had become deemed review decisions. Mr Murray Carter forwarded this to Aisha Dean on 17 July at 11:19am.

146. It appears from their notes that ACC and DRSL then communicated further and tried all avenues that were available to deny my mother deemed review decisions.

Deemed Review Decisions and Access to Justice

147. Section 146 of the Injury Prevention, Rehabilitation and Compensation Act sets out a legislative penalty for administrative delay.

146 Deemed review decisions

(1) The reviewer is deemed to have made a decision on the review in favour of the applicant if—

*(a) the date for the hearing has not been set within 3 months after the review application is received by the Corporation; and
(b) the applicant did not cause, or contribute to, the delay.*

(2) The date of the deemed decision is 3 months after the review application is received.

148. This section relates to review applications and means that if a claimant lodges a review application, and a hearing is not set down to be heard within 3 months, the reviewer is “deemed” to have made a decision in the claimant’s favour. This is to stop the Corporation delaying access to justice.

149. In my mother’s case, months had gone by and hearing dates had not been set. It would appear that she had five deemed review decisions, including the decision relating to Physiotherapy.

150. On 17 July, I wrote to ACC explaining that deemed review decisions had been made [*Annex XXXII, Exhibit W-1*], and it appeared that this caused a flurry of activity within DRSL and the Whangarei Branch of ACC. At this point, I was in London, United Kingdom.

151. ACC and DRSL then repeatedly stated that my mother had caused the delay. I understood why ACC was stating that my mother caused the delay, however I could not understand why DRSL would be supporting ACC. My communication with the parties during this period is set out in the exhibits within [*Annex XXXII*]. An affidavit duly sworn at the High Court of New Zealand on 8th August 2006. My mother’s affidavit is also relevant here [*Annex XXXIII*].

152. DRSL and ACC wanted to go ahead with a hearing on 9th August but they refused to provide me with the evidence to support their view that my mother caused the delay. I repeatedly requested all information held by both DRSL and ACC. It appeared to me that the issue was whether DRSL or my mother caused the delay.

153. Having not received a satisfactory response from ACC or DRSL, on 25 July, I wrote to Dr White, ACC CEO explaining the situation and requesting that she take action and provide information [*Annex XXXII, Exhibit W-8*]. I did not receive a response so on 27 July, I wrote directly to Michelle Donovan, Reviewer, at para 3 and 4, I wrote:

[3] “I do not believe that it is reasonable to proceed to review hearings until the issues, regarding whether or not

deemed review decisions were made, have been resolved. The first step in resolving these issues is ACC and DRSL making available the requested information set out in my letter of 25 July to Dr White, ACC CEO. The second step is identifying the forum in which the dispute regarding the deemed decisions can be heard. As both ACC and DRSL will be required to give evidence, I do not believe that it is reasonable to expect that DRSL can provide the independent service required to resolve this issue. Therefore I believe that the services of an independent mediator must be provided. The third step is following this process through so that we reach a resolution. At that point, if the outcome is that there were no deemed review decisions, then I will agree to go ahead with the reviews.

[4] I understand that you would like to set a hearing date for the 9th August. Considering the above points, I believe that this is unrealistic.

154. I did not receive a response from Michelle Donovan so I wrote to her again on 31st July. It is important to note that at no stage did I agree to a hearing date of 9th August 2006 and I am in the United Kingdom preparing for summer holidays. My email of 31st July, which was not responded to in a timely manner, is set out below:

Dear Ms Donovan,

I am writing to confirm that you have received my letter of 27 July. I understand that it may take some time to respond to this, however as DRSL was attempting to set a hearing date of 9th of August, I felt that it was important and in the interests of administrative efficiency to clarify whether or not you have received this letter so as to avoid the unnecessary expenditure on the part of ACC regarding submissions being prepared, venues being booked, and reviewer time being allocated.

As set out in my letter to Ms Vance of 21st July that was CC'd to Ms Aisha Dean, DRSL and Mr Ian Pickersgille, OCI; I respectfully request that I am CC'd in all communication after this date between ACC and DRSL, and also within each of these organization...

Establishing the Issues for the hearing regarding Physiotherapy

155. At the same time as I was attempting to procure information, the DRSL and ACC “**justice juggernaut**” kept on going. It appears now that they were going to hold their hearings on the 9th August, regardless of what was said or done.

156. On 17 July 2006, ACC received “**Advice from DRSL**” [Annex XIII, Page 58]. This was in the form of a letter from Mr Murray Carter, “Coordinating Reviewer”. This letter was to

Miriam Vance, ACC Whangarei Branch and Aisha Dean, DRSL.
It stated in part:

"Aisha – the issues to be set down in order of review numbers above are:...

44669: Payment for further physiotherapy treatment declined."

157. Some time following this, it appears from the “editing” on Mr Carter’s email [*Annex XL, Exhibit 8*], that Ms Donovan or another person edited the advice from Mr Carter. The “editor” decided not to change the “issue” for review 44669. On Thursday 20 July, Ms Aisha Dean sent an email to Mr W Forster and Miriam Vance stating in part:

"Ms Donovan has advised me that the issues to be set down are:

44669: Payment for further physiotherapy treatment declined."

158. It was clear at this stage that the reviewer felt that the issue of physio treatment was a substantive one.

159. On 27 July, in advice to Mr Ian Pickersgill, ACC Office of the Complaints Investigator, Miriam Vance wrote, referring to Review Application Number 44669:

"acceptance that the review decisions are deemed may mean... ACC would be required to approve and pay for physiotherapy in respect of review application 44669."

160. On 27 July, Ms Vance also wrote “I do not have any written evidence that the applicant has caused or contributed to the delay, only advice from DRSL that Mrs Forster asked for the reviews to be adjourned.

Setting down the dates for the hearing

161. On the afternoon of 3 August 2006, Ms Donovan wrote to Miriam Vance and I stating:

3 August 2003 [Sic]

Dear Ms Vance and Mr Forster

Review Hearings: 44372, 45197, 44669, 44977, 45012

Mr Forster has raised the issue of whether deemed review decisions exist by operation of law in respect of all of the above review applications. He has asked me to defer hearing these reviews pending the outcome of this question. (His letter dated

27 July, sent by email to me, refers.)

I write to confirm that the above review hearings set down for Wednesday 9 August 2006 in Whangarei in respect of Mrs Valerie Forster will proceed as scheduled. The hearings will commence at 2.00pm.

Mr Forster is able to raise the question of whether there are deemed review decisions on these reviews at that time. I will deal with this point as a preliminary matter, and will receive submissions from both parties on this question.

I will also hear evidence and submissions on the substantive issues raised in each of the above reviews. The issues in relation to each review application have previously been identified in a letter dated 20 July (sent by email to Mr Forster).

Please be ready to address those matters at the hearing on Wednesday.”

162. I was in London, UK, I had repeatedly made requests but my communication had been ignored for weeks. Both ACC and DRSL were refusing to supply information. I had requested that information be provided. I had explained the obvious, that a DRSL contracted reviewer cannot hear a case between DRSL and my mother. Everything had been delayed until the last minute so that I couldn’t come to New Zealand.

THE PENNY DROPPED

163. Why was this happening? Such a review hearing would clearly breach the principles of natural justice. You can’t hear your own case! Michelle Donovan wanted to hear a case about whether her employer or my mother caused a delay. It just didn’t make sense, but by this stage, not much did.

164. I was trying to work out why DRSL was going ahead with these hearings. I smelt a Rat. I had been searching through the Service Agreement between ACC and DRSL and the employment agreement between the reviewers and DRSL. I knew that information was missing from the copy of the contracts that I had. I thought that the “*motive*” might have been from the missing pages regarding “*performance*” in Schedule 3.

165. Then I found it – Schedule 1, Clause 4.2 [*Annex XXIX, Page 16*]. For each deemed review decision, DRSL was faced with a \$15,000 penalty fine. My mother had 5 such decisions,

including review application 44669 regarding physiotherapy. This means that DRSL was faced with a \$75,000 fine. That is why the reviewer wanted to hear the case. That is why ACC and DRSL were refusing to supply the requested information. That is why Michelle Donovan set down the hearing date at the last minute to stop me getting from London to New Zealand in time.

166. I wasn’t sure what was going to happen. I packed my bags, organised the video editing software, picked up some other necessary and appropriate equipment and called everyone I knew who may be able to loan me the money for a flight to NZ. At the last minute, it came together and I flew to NZ.

Strategy to deal with Deemed Review Decisions

167. It was clear from the fact that Michelle Donovan, DRSL and ACC intended to go ahead with the hearing that they had a strategy in place for dealing with the issues of deemed review decisions. There is no way that a reviewer would be allowed to find in favour of an injured person if this meant a \$75,000 fine. Furthermore, considering the intertwined relationship between the Corporation staff and DRSL staff and the way in which it appears that DRSL is altering of Records of Transcript in order to “cover up” the mistakes of the Corporation’s Branch Staff, the Branch Staff would be likely to assist DRSL with any “Cover up” DRSL does for ACC.

168. It appears to me that staff from ACC and DRSL may have conspired in an ill-conceived plan to defeat justice. It would appear that when they made this plan, they assessed the risk that an old woman who’d been in chronic pain for 12 months could expose their plan and decided that there was little chance of that and it was worth the risk to go ahead. I have seen significant evidence of such systemic victimisation over the last 18 months where the vulnerable members of our society are treated in an appalling, misanthropical manner.

169. There are two mechanisms for denying a deemed review decision. Claimant caused the delay, or the reviewer declines jurisdiction.

170. The first, and easiest way is to show that the claimant caused or contributed to the delay. According to ACC and DRSL’s interpretation of s. 146, ACC could issue a decision, thus forcing the claimant to “review” this decision. Although this is

not a decision pursuant to s. 6 of the Act, a reviewer would “allow jurisdiction” to hear this issue. What often happens in cases like this is that the reviewer finds “no deemed decision” but the claimant wins the substantive matter. This would allow a reviewer to find that no deemed decision exists, DRSL avoids the \$15,000 penalty and maintains their performance indicators.

171. The second way to avoid a deemed review decision is that the reviewer declines jurisdiction. There are several possible reasons for this.

- i. The reviewer can find that the issue is *res judicata*, this means that it has already been the subject of a review decision or appeal.
- ii. The reviewer can find that the decision is not a reviewable decision within the meaning of the definition of decision as set out in s. 6 of the Act.
- iii. The reviewer can find that the issue is a reviewable decision however it is merely a “reassertation of the status quo” whereby a “reviewable decision” was issued but it “didn’t change anything” and therefore it isn’t really a decision!

172. In relation to the deemed review decision regarding the decision to decline physiotherapy, the reviewer tried all three mechanisms. Firstly ACC and DRSL falsified evidence in order to “prove” my mother caused delay. Then ACC and DRSL purported that the matter was the subject of an earlier review by using misleading documents. Finally, the reviewer was out of options so she had to go with “it didn’t change anything”. The following paragraphs explain how this occurred.

Falsification of Evidence: “E – works log”

173. ACC and DRSL had originally conspired to defeat justice using the “claimant caused delay” option, s. 146 approach.

174. Unbeknownst to me, on 27 July, it is very clear that ACC had no written evidence that Mrs Forster caused or contributed to the delay [*Annex XXIII, Page 14, para 9*]. It is clear that ACC wanted this written evidence from DRSL. I believe that ACC contacted DRSL for purposes of procuring written evidence that ACC could then use, both DRSL and ACC have refused to supply

me information, however, I do not believe that DRSL decided to supply this to ACC without a request.

175. On 2 August 2006, someone at DRSL printed single paged document [Annex XXV] and provided this to ACC as a PDF [Annex XXIV]. This means that this document would have been attached to an email and from Annex XXIV, it would appear it was attached to an email that was sent to Miriam Vance. Despite the fact that I have repeatedly requested full disclosure, this email has not been provided to me.

176. The document [Annex XXV] is incomplete. It turns out that this document was printed from E – Works, DRSL, Activity Log. The top four rows are most relevant.

177. The right hand fields in rows one and two contain only a full stop. The right hand field in row three states words meaning “all reviews adjourned as per Mrs Forster’s request”. The right hand field in row four states “reviews assigned to Whangarei Circuit.” Rows three and four, which completely contradict each other, were assigned by two staff members, 2 minutes apart. The more senior staff member allegedly assigned the reviews to the Whangarei Circuit and the more junior staff member allegedly adjourned them all two minutes later!

178. In Summary, Val Forster did not request that all reviews were adjourned on 26 May 2006 [Affidavit, Annex XXXIII]. Furthermore, the alleged adjournment came 2 minutes after Tanya Cosgrove assigned all reviews to Whangarei Circuit. Thirdly, DRSL has guidelines on adjournment [Annex XLVII, Page 4 – 6] these actions of Aisha Dean, review co-ordinator employed by DRSL are completely inconsistent with these guidelines. For a detailed discussion of these documents, please see the affidavits of my mother and I, regarding these matters, attached at Annex XXXII and Annex XXXIII.

179. *Prima Facie*, it appears that this document has been altered by DRSL and provided to ACC to satisfy an ACC request for written evidence that Mrs Forster cased the delay.

180. It appears that this “evidence” was provided to ACC on 2nd or 3rd of August and it was “approved” by someone. It appears that following this “approval” Michelle Donovan was given the green light to move ahead with the hearings (see below). At 5.56pm on Thursday, 3 August 2006, Michelle Donovan decided that review hearings would go ahead on Wednesday 9 August at

2pm in Whangarei [*Annex XXIV*].

181. The following morning at 8.02am, Miriam Vance sent the falsified evidence to ACC Corporate Office [*Annex XXIV*]. At this point, Ian Pickersgill forwarded it to Mylinh Dao, (position unknown) and Kurutia Seymour, Chief Advisor, Customer Relations. It appears that a discussion took place between these three Senior Managers of ACC. It should be clear that the evidence is at best incomplete and at worst, has been falsified. The only other people within the Corporation who could have intervened were the Chief Executive or a member of the Board.

182. I did not know of these facts, until the information was finally provided to me at a later date. At that point, I contacted the Minister for ACC, along with the Chief Executives of ACC and DRSL and the Board Members of DRSL requesting that they intervene. They all declined.

183. There is no doubt that the falsified document, purporting to show that Mrs Forster adjourned all reviews, which was provided to ACC by DRSL [*Annex XXIV*] on the 2nd, 3rd or 4th of August was not provided to my mother or me at that time.

184. The document, which I allege was falsified, was first provided to me at my mother’s home on the 8th August. When I first saw the document, it was clear to me that the document was definitely incomplete and, *prima facie*, had been falsified by DRSL so that it could be used as evidence by ACC.

185. I arranged for my mother to ring DRSL and ACC and arranged for these calls to be digitally recorded. For a detailed breakdown of what occurred, please see *Annexes XXXII and XXXIII*. The digital recordings are also available.

186. Tanya Cosgrove, DRSL, is heard on the recording to deny the existence of DRSL’s activity log, even after my mother described it to her, and she can be heard telling my mother to contact ACC. Tanya Cosgrove then sent an email to Michelle Donovan about this matter [*Annex XXVI*]. From Michelle’s response it appears that she is at least aware of the “e-works things.”

187. ACC was more helpful, Pathway [*Annex XIII, page 43*] sets out that Miriam Vance took a phone call from my mother who requested that ACC provide her with all pages of the DRSL notes. Miriam noted on pathway that she advised that she would request

that DRSL provide the documents requested.

188. There is no record of Miriam, or anyone else, requesting that DRSL provide any information. The next entry on Pathways [Annex XIII, page 42] is a letter from Sally Hume dated 8 August 2006 [Annex XXXII, Exhibit 14], Sally Hume states, “*the information that has been sent relating to your communication with DRSL is complete. There is no additional information held by them.*”

189. It took a further 5 weeks before DRSL finally released the further information (more than 150 pages) held by them. The information released was incomplete and much of it had been blacked out [Annex XXVII]. (I have not included these 150 pages as an Annex in the interests of brevity, however they are certainly available).

190. There is no doubt that the statement by Sally Hume in her letter of 8 August 2006 that “the information was complete,” is false. I have no doubt that Sally Hume understands how the DRSL process works and knows of the volume of information held by DRSL. It certainly appears to me that when Sally Hume wrote this letter, she knew that she was making a false and misleading statement. The purpose of making this statement was to allow ACC and DRSL to bulldoze ahead with the review hearing the following day without exposing the damning information about the conspiracy to defeat justice.

The Jurisdictional Issue Pre-Hearing

191. ACC’s submissions for the “deemed review decisions” issues, which Michelle Donovan was purporting to hear, are attached at Annex XXVIII. I have double underlined the errors in these submissions. Not only were they relying on incomplete and probably falsified information [Annex XXV], the dates that they were submitting were wrong, when I pointed this out to ACC, Sally Hume laughed. Once the correct dates were established, it was clear that most of the review applications had already become deemed before the 26 May when Mrs Forster allegedly asked for all review hearings to be adjourned.

192. It was clear from ACC’s actions and submissions that they felt that the Accident Compensation Corporation could ask the

reviewer to hear a review about a “decision” which had become deemed, rather than appeal the decision to the District Court in accordance with Part 5 of the Act.

193. Furthermore, it appears that ACC wrote a decision on 7 August 2006 and sent this to my mother in a taxi on 8 August 2006. It appears that the Corporation and the reviewer agreed that the reviewer would hear a review regarding the letter of 8 August on 9 August. Furthermore, it appears that the Corporation feel that it was acceptable to notify the claimant of this on the afternoon of 8 August!

194. On 8th August 2006, having been in New Zealand less than 24 hours, I produced review applications regarding ACC’s actions and omissions as they related to deemed review decisions. These were lodged on 9th August and 10th August 2006.

195. At the review “pre-hearing” held on 9 August, neither the jurisdictional, nor the substantive issues were heard and the “pre-hearing” was adjourned part heard. The pre-hearing started poorly when Michelle Donovan appeared with two security guards. She rudely told three people who had travelled to attend the hearings that she would not allow them to enter the room. Statutory declarations from these people can be provided. We then entered a room with a security guard either side of a locked door. Michelle Donovan refused to allow a recording of the first part of the “pre-hearing” when she behaved in an unacceptable manner.

196. Michelle Donovan then purported to conduct a “pre-hearing” about issues, which were the subject of separate review applications that had earlier been lodged.

197. My mother was very upset about the presence of the security guards and also upset about the manner in which Michelle Donovan had conducted herself (Michelle Donovan had behaved in an unacceptable manner). Whilst I slept, my mother was distraught so she wrote how she felt. What she wrote on the morning of 10 August is attached [*Annex XXXVII*].

198. I have been awaiting the “transcript” of the “pre-hearing” since I lodged the Notices of Appeal in the District Court in December 2006. It appears that DRSL and Michelle Donovan are having issues providing this information.

Setting down the issues for further hearings

199. On 10 August, Ms Donovan wrote to Miriam Vance, W Forster and Sheryl Schuster. She stated at point 2:

"2. The Hearing of the Substantive Issues in each review"

"The hearing into these matters set for 9 August 2006 was adjourned owing to a lack of time"

She went on to state a fresh hearing date will be set, it was clear from Ms Donovan’s communication that these hearings were not “jurisdictional hearings”, but hearings into “substantive issues”

200. On 14 August, Ms Donovan wrote again “setting down hearing dates”. She stated, in part:

"At the hearings on 9th August, it was agreed that the scheduling on the 5 remaining reviews would be set down..."

Ms Donovan was not clear about exactly “which” issues would be heard, however by this stage, the issues set down on the application for review had already been “adjusted” by Mr Murray Carter on 17 July and it appears by Ms Donovan prior to the 20 July when the issues were emailed to the various parties by Ms Dean.

At the bottom of her letter of 14 August, Ms Donovan again “adjusted” the issues to be heard so that the sole issue to be heard relating to review number 44669 was “*Reviewer’s Jurisdiction: matters stated appear to be addressed by review decision in Review No. 43478*” .

201. On 17 August 2006, Ms Donovan wrote to Mr Forster setting out that, amongst other things, she would not issue a decision “*until the jurisdictional issues raised in the above reviews are dealt with*” .

ACC MISLED THE REVIEWER BY ALTERING THE SUBMISSIONS FROM THE REVIEW IN 2005, RA 43478

202. On 8 September, 2006, Aisha Dean wrote to Miriam Vance and me [*Annex XXXVIII*], setting out that a review will take place on Monday 18 September 2006, and the sole issue for review application number 44669 is:

Reviewer’s Jurisdiction: matters stated appear to be addressed
by review decision in Review No. 43478

Why was this set down as an issue?

203. At the hearing which had taken place on 9 August 2006, ACC produced submissions, dated 14 December 2005 [*Annex XXXVI*]. These were submissions produced for a hearing Review Application 43478 held in December 2005, in fact, they were identical to the previous submission, including being dated 14 December 2005, except at Para 1.2 of the submissions presented to the review in August 2006, it states that the issues include:

“1.2 ACC’s decision to decline request for physiotherapy treatment dated 28 November 2005”.

204. It is clear that this **para 1.2 was not contained in the review submission lodged in December 2005** [*Annex XXXV, page 2*].

205. It appears that Sally Hume had taken the Dec 2005 submissions and **added** para 1.2 to these. It is clear that the reviewer believed that these submissions, as presented in August 2006, were the exact review submissions as lodged in 2005. There is no other possible explanation of why the review set down the hearing for 18 September as “*jurisdiction as the matters stated appear to have been addressed by review decision in review No. 43478.*”

206. The evidence set out here must be examined in light of the fact that the record of transcript from the 2005 Review Hearing has been altered so that it doesn’t include my comments regarding the fact that the decision reviewed in 2005 did not include physiotherapy. The fact that ACC had presented these altered submissions to the reviewer in such a manner is misleading, deceitful and unacceptable.

THE HEARING ON 18 SEPTEMBER

Presence of Security Guards

207. On 18 September 2006, a “meeting” was held at Forum North, in Whangarei. Present at the beginning of the Meeting were:

- i. Ms Michelle Donovan, DRSL,

- ii. Ms Sally Hume, Team Manager, ACC Whangarei Branch
- iii. Miss Miriam Vance, Technical Claims Manager, ACC Whangarei Branch
- iv. Mr Warren Forster,
- v. Mrs Val Forster,
- vi. Mr John Huntley,
- vii. Mr Rangī Selwyn, A1 Security

208. Outside the door was Mr Friday Tomei, A1 Security.

209. Ms Donovan, in her capacity as a reviewer had set down five hearings, purporting to exercise powers granted on her through Part 5 of the IPRC Act.

210. In my letter to Ms Donovan of 15 August 2006 (WF/02/15Aug06) [*Annex XLIII*], I clearly set out that it is not acceptable that security guards are present the review hearings. In the letter I stated, in part, at Para 13,

“I believe that the manner in which you conducted your “pre-hearing” breaches numerous provisions of relevant national and international laws... Mrs Forster has a statutory entitlement to be present at the “pre-hearing” and any review hearing and it is a grave injustice to deny her this right or inhibit the facilitation of it. I have explained these issues to my mother and she is very upset that she is being treated in this manner.”

211. Attached at *Annex XXXVII* are the notes made by my mother following the hearing on 9 August that led me to write the above paragraph to Michelle Donovan.

212. Notwithstanding the abovementioned point, it certainly appears that Ms Donovan arranged for 2 security guards to be present during the “meeting” on 18 September.

213. What took place on 18 September 2006 at Forum North in Whangarei **can not** be compared to the due process envisaged by Parliament and set out in Part 5 of the IPRC Act. The actions of Michelle Donovan were simply unacceptable. A summary of what occurred is available at *Annex XXXIX*. Digital recording are available to the Head of Inquiry on request.

DEEMED REVIEW DECISIONS

214. The reviews applications dated 8 August, which related to “*deemed review decisions*”, were never heard due to actions of another DRSL reviewer. Again a review decided to hear the matters “on the papers” without my agreement and without my submissions. These decisions have also been appealed to the

District Court. Again, I have asked for the recordings which the reviewer made at the time of the alleged “hearings” and she has declined to provide them, or a transcript to the Court.

REVIEW DECISION

215. In late November 2006, Michelle Donovan, Reviewer issued her review decision [*Annex XLIV*]. It is very important to note that the review decisions issued by Ms Donovan are totally unique because they are **totally void of any submissions made by either myself or the Corporation**. The decisions are made up solely of Ms Donovan’s statements and submissions to herself.

216. I have pondered why Michelle Donovan would omit all of the Corporation’s submissions from her review decisions. It would appear to me that there are two reasons for doing so.

217. Firstly that she did not ask for any submissions into the issues upon which she issued a decision i.e. she requested and received submissions regarding a different issue to that upon which she made a decision.

218. The second reason for omitting all submissions is that all submissions presented by the Corporation with regard to their decision to decline Physiotherapy were based on evidence that appears to have been falsified. My submissions are a different matter, why would she omit my submissions? Possibly because of the fact that the information contained therein is not favourable to Michelle Donovan her employer, DRSL or their client, the Corporation.

219. Furthermore, the statements made by Ms Donovan in the review decision contain both false and misleading statements of fact, designed to justify Ms Donovan’s actions to the appellants jurisdictions.

220. As expected, the substance of the decision is that she declined jurisdiction. The reason that Michelle Donovan used to decline jurisdiction surprised me. She cited the fact that the physiotherapy letter does nothing more than reassert the status quo, which was developed by the letter of 11 November which stated, *inter alia*, all entitlements will cease on 9 December 2005. At page 9, She stated:

*Is there a reviewable decision in the 28 November 2005 Letter?
A different problem arises with the physio letter. Because of the existence of the earlier decision suspending all entitlements on this claim (the 11 November 2005 letter) the physio letter, despite its appearance, does not in fact contain a fresh decision entitling Mrs Forster to bring a review under s. 134 (1) (a).*

...

It is clear that the physio letter does nothing more than assert the status quo of ACC’s earlier decision. That was that ACC had decided that Mrs Forster would not receive further entitlements under the claim for the August 2005 accident because her need for these was not in relation to that claim, but to a pre-existing degenerative condition.

I am therefore satisfied that the letter of 28 November 2005 does not constitute a fresh decision on Mrs Forster’s entitlements enabling her to bring a review of its contents under section 134 (1) (a). Therefore any application purporting to review that letter must be invalid, and I therefore have no jurisdiction to hear a review of it.

221. It is important to remember that the review-hearing transcript from the December 2005 review does not include the submission I made, that the letter of 11 November did not include Physiotherapy. It is also important to remember that in the review of the Corporation’s “cover decisions” of 9, 13 and 15 December, Michelle Donovan decided that the decisions were unreviewable [Annex XLIII].

222. It is clear that in Michelle Donovan’s eyes, she could justify her decision. She had managed to decline jurisdiction (she declined jurisdiction on all 5 review applications) and therefore there were no deemed review decisions and she saved DRSL from a \$75,000 fine. She also had managed to not use the falsified evidence, either from the falsified submission from 2005 [Annex XXXVI] or the activity log which was falsified by DRSL [Annex XXV].

223. Neither I, nor ACC, were asked to address the issue of whether the letter did more than assert the status quo which Michelle Donovan submits was established by the decision of 11 November 2005.

224. It is abundantly clear from the information provided in Part II of this submission that the delay in processing the ACC32 along with the eventual decision to decline Physiotherapy, which was made on 28 November effectively, denied my mother access to physiotherapy from 15 November. It is clear that **denying my mother physiotherapy from 15 November to 9 December** is very different from receiving physiotherapy treatment across this period, which is referred to as the “status quo” by Michelle Donovan. She would like us to believe that Physiotherapy was being supplied to Mrs Forster up until 9 December 2005 and the letter of 28 November merely reasserts the status quo.

225. Furthermore, because Michelle Donovan had issued the decision for the Physiotherapy review together with the decision

on the Individual Rehabilitation Plan, a substantially independent and totally different matter, the court may never get to the bottom of the issues.

ACCESSING JUSTICE AND INTERFERENCE FROM THE CORPORATION

226. The next paragraphs relate to actually getting the Physiotherapy decision into Court! This is relevant to the Inquiry into Physiotherapy Services because it demonstrates how ACC feel they can influence the Court. This provides an insight into ACC’s confidence to interfere in the Judicial Process. If this is what happens at the District Court level, imagine what goes on within the walls of DRSL, a wholly owned subsidiary with a vested interest in, and performance targets for, satisfying their biggest and most valuable client, the Accident Compensation Corporation.

227. I duly lodged notices of Appeal for each of the review decisions issued by Michelle Donovan and her colleague, Lindy Clark [*Annex XLV*]. Specifically, I lodged separate notices of Appeal for each of the decisions issued in regard to each review application. RA 44669 (Physiotherapy) and RA 44977 (IRP) were each the subject of an independent and separate Notice Of Appeal.

228. The court processed these Notices of Appeal (and 20 others) and registered each of them as separate appeals [*Annex XLVI*].

229. Emails were exchanged and phone conversations took place where the Corporation told the court it was wrong to register the separate appeals. Mike Mercier, the Manager of Legal Services then spoke to the Court and one of the Deputy Registrars spoke to a Judge who asked for submissions. I asked ACC and DRSL for information regarding their process for combining review decisions together and then I was told that the Court does not require submissions and would make a decision. I disagreed with the fact that I would not be given the opportunity to lodge formal submissions and I wrote to the Judge. The available records of communication are included at *Annex XLVI*.

230. Judge Cadenhead, who was assigned to hear the matter, was replaced with Judge Beattie. On 7th Feb 07, the court faxed me a decision that the review decisions regarding the IRP and Physiotherapy were separate decisions, seemingly from separate applications for review, and the designation of separate appeal numbers for those Notices of Appeal seems entirely appropriate [*Annex XLVI*].

231. I have since been advised by the Corporation that the Key Performance Indicators of the Legal Services Unit include that 70% of Appeals are decided in ACC’s favour. Therefore the remuneration of the ACC Legal Services Unit staff who contacted the court is tied to winning Appeals.

232. I lodged 22 Notices of Appeal in December 2006 and one in Jan 2006. Together these total 23 Notice of Appeal. If I was to win each of these Appeals, this would form a high percentage of the cases lost by ACC. Key Performance Indicators are calculated quarterly. As it is likely that all of these appeals will be heard close together, the Corporation stands to loose 23 Appeals in one quarter which is likely to double the number of Appeals allowed during this period. This would severely affect the Remuneration of the ACC Legal Services Unit Team. There is no doubt that Mr Mike Mercier, Manager of Legal services Unit is aware of these issues. I have copied him on my communication with the Court.

233. From the comments made by Mr Mercier [*Annex XLVIII, Page 3*], it appears that Legal Services Unit does not have any advantage in registering a limited number of Appeals. I have no doubt that Mr Mercier is aware of two facts that are most relevant here. Firstly the Key Performance Indicators and how they are managed. Secondly, the fact that the reviewer, the Corporation and DRSL have failed to comply with Part 5 of the Act. It appears to me that Mr Mercier would have to be aware of how his actions to reduce the number of Appeals Lodged are in the interests of the Corporation and his own Business Unit.

PART IV

PHYSIOTHERAPY

Systemic Issues of Physiotherapy

234. Treatment is an entitlement as it is an element of Rehabilitation (s. 69 (1) (a)) and the Corporation has a statutory duty to provide treatment to claimants in accordance with the Act.

235. The Injury Prevention, Rehabilitation and Compensation Act 2001 incorporates a unique concept – the spirit of the Act – this relates to the social contract that came into force on 1 April 1974. Section 3 of the Act sets out its purpose:

The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs), through---

*...
(c) ensuring that, where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant's health, independence, and participation:*

236. This means that my mother was entitled to treatment with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent, her health, independence and participation.

237. Mrs Forster’s physiotherapist completed an ACC 32 [Annex V]. It is clear that my mother was in constant severe limiting leg pain [Annex V, Page 2]. The functional goal was to decrease pain to a manageable level, pain relief modalities, gentle exercise, management advice and maintain function within limits of condition. There is no doubt that the physiotherapy was both necessary and appropriate and it was part of achieving appropriate quality of life.

238. A clinical advisor decided that the Corporation will decline the treatment, however it is not merely a problem of poor advice. This is merely a symptom of a systemic failing.

How has this developed?

239. In 2002, the Corporation’s third strategic goal was “fair levies”. The Strategic objective of ACC Healthwise, which related to “fair levies” was “facilitate the provision of effective, appropriate rehabilitation and entitlements, within the Constraints of legislation, evidence based healthcare and best practice” [Annex XLIX, an extract from section 12.E of Volume I of ACC Legislation, Policy, Procedures and Systems, A Case Review].

240. The key performance indicators for ACC Healthwise [Annex XLIX,], relating to “fair levies” included

- i. Provider Performance Benchmarking, the “report cards” given to treatment providers.
- ii. The number of services under contract.

241. In May 2002, a report from the New Zealand Institute of Economic was provided to ACC. It discussed the Monopoly Provider of Accident Insurance in New Zealand controlling the Market for providing post accident physiotherapy treatment to injured people [Annex L].

242. This report discussed how the Endorsed Provider Network aims to reduce the number of treatments per claim though financial incentives on providers to provide treatment to injured people in accordance with “treatment profiles” which were promulgated by ACC.

243. The report assumed that physiotherapists were motivated by income objectives so would respond positively. It spoke about how providers who were meeting the New Zealand Physiotherapy Accreditation Scheme (NZPAS) providing fewer treatments than those who were “not accredited” but it admitted that there was no systemic evidence available about the impact on outcomes! It admitted that ACC would benefit if all providers would change to a similar treatment profile to that of NZPAS accredited providers. These treatment profiles were referred to as “best practice”. The report sets out the EPN approach to give incentives to providers to deliver physiotherapy services in accordance with these “treatment profiles” and give incentives to consumers to switch to providers who follow “treatment profile.” It went on to describe how the Corporation could control the Market [Annex L].

244. In June 2003, ACC published the “New Zealand Acute Low Back Pain Guidelines [Annex LI]. These are not evidence based, not consensus based and not subject to consensus review [Annex LII, Page 5/8]. The are “endorsed by” several organizations, including the New Zealand Guidelines Group.

245. ACC uses treatment profiles to “change provider behaviour” and ACC Healthwise developed complex system to control the behaviour of physiotherapists, it included measuring

providers against profiles labelling the outliers “bad providers” and investigating them for Fraud and then “being ruthless with bad providers” [Section 12.E of Volume I of ACC Legislation, Policy, Procedures and Systems, A Case Review].

246. This left many treatment providers in a terrible position, whereby if they provided treatment in accordance with their ethical and statutory duty, they could be “hounded” by the Corporation and Private Investigators hired by the newly formed “Provider Fraud Unit”, which in June 2005, out of 13,000 providers used by the Corporation, had actively prosecuted two [Section 12.E of Volume I of ACC Legislation, Policy, Procedures and Systems, A Case Review].

247. This fragmented the physiotherapy profession, which effectively gave more control to the Corporation. This resulted in even worse abuse of market power.

248. By the time my mother required treatment following her accident in 2005, this system was firmly entrenched. It resulted in her being denied treatment.

249. This system did not develop naturally. It is clearly a system that developed from a well-designed and structured strategic plan to deny claimants their statutory entitlements and there is no doubt that this breaches the social contract that came into force in April 1974 and it breaches the spirit and purpose of the Act.

250. Furthermore, the Accident Compensation Corporation has been misleading New Zealanders as to what it provides.

251. For more information on these concepts and a detailed discussion. Part VI of Volume I of ACC legislation Policy, Procedures and Systems, A Case Review develops the systemic issues associated with these concepts.

How has this been allowed to develop?

252. The Corporation has over 8 levels of oversight before one reaches the Board of Directors and the Minister for ACC. Has this really gone unnoticed for the last 10 years?

ACCESS TO JUSTICE

253. One of the fundamental principles of a free and democratic society, which is enshrined in the New Zealand Bill of Rights Act, is access to justice.

254. Unfortunately, the issues raised in this submission regarding access to justice are not unique to my mother and me. It is clear that if a decision is made by the “clinical advisor” or Case

Manager regarding physiotherapy, the due process as followed by claimants is completely devoid of justice, and even more sadly, it doesn’t provide a remedy to claimants who are forced to rely on the justice system to access their statutory right to treatment.

255. Eighteen months and tens of thousands of dollars later, a judge’s decision that my mother was entitled to physiotherapy treatment does not even start to provide a useful remedy to her, or me. The regulations limiting costs awarded on successful appeal mean that I will not even have enough to cover my phone bill.

256. What remedy is left to me, an action in exemplary damages in the High Court against the Corporation and its officers for misfeasance in Public Office?

CULTURE

257. Although I believe that several key individuals masterminded this system, this system has been kept in place by a classically wayward “*corporate culture*”. One only needs to review the manner in which my mother was treated and the subsequent actions of the Corporation and its subsidiaries, agents and employees to find ample examples.

258. Unfortunately, the culture is very difficult and slow to change. As demonstrated in this submission, the falsified document went to the most senior level within the ACC CEO’s office.

259. When I first published Volume I of my report, I wrote to Dr White [*Annex LIV*]. Amongst other things, I stated on page 3

“... To put this plan into practice, ACC identified the areas most costly to ACC, where it believed it could deny coverage across the board. For example, one of the key areas identified was Low Back Pain. ACC has further developed their treatment profiles, best practices, guidelines and enforcement strategies in a manner which will allow them to exit claimants from the scheme who suffer from low back pain and in particular “chronic low back pain” irrespective of the cause of this pain.

I am alarmed at the policies which have been developed by ACC to “constrain” the provision of entitlements to claimants so as to obtain pecuniary advantage and meet the financial targets placed on them by the government and the resulting ACC business plan. These policies are illegal and unconscionable. For the reasons outlined in the attached report, I am alarmed at the “enforcement strategies” designed, developed and implemented by ACC in order to force ACC staff, ACC contractors and “independent” treatment providers into complying with this complex web of measures designed to produce a litany of farragos and lies.

For the reasons outlined in the attached report, I am alarmed at the manner in which ACC has developed farraginous "legislative directives" in order to allow ACC to control treatment providers."

260. Notwithstanding the fact that my statements were supported by detailed information and presented following months of research, the Corporation’s response to this particular issue [*Annex LV*], written by Ku Seymour and “approved” by Dr White includes on page 3:

"With regard to the development of guidelines and profiles; ACC, like most other purchasers of services, has develop guidelines and profiles which help with the appropriate provision of timely services and treatment. The clinical guidelines produced by ACC are developed by clinicians from the appropriate field, and are based on best practice for that field.

*The intent of the guidelines is to ensure ACC claimants get the treatment and support they require when they need it. **Cost is not a driver for the introduction of ACC’s guidelines."***

261. It would appear to me from the information set out in this submission and its annexes that the statement by the Corporation that “*cost is not a driver for the development of guidelines*” is not correct.

262. The fact that this was “approved” by the CEO would lead me to believe that the CEO is not aware of what went on between 1998 and 2005.

263. If more information is required on this element of the system and how the Corporation uses the Performance Management System to enforce its strategies, Section 15 of Part VI of Volume I of ACC legislation Policy, Procedures and Systems, A Case Review analyses and discussed the systemic issues associated with these concepts.

ENDNOTE

264. These submissions, and the information contained within them, have been developed with the assistance of a substantial network of individuals and organizations. Many of these people are badly injured and severely traumatised by the way their lives have been destroyed by these vicious systems, yet they have shown the faith and determination to seek to identify, investigate and fix the problems.

265. Unfortunately, most of these people do not have the capacity to write formal submissions, or to identify and analyse a complex system designed by expert strategists, but these people know that something is wrong and they are prepared to help fix the problem – they just don’t know where to start. Most of these people do not have the capacity to move to Australia to seek independent treatment for their injuries, nor should they have to.

266. We share a moral duty to these injured people to address this situation and we must design and implement a system, which provides real remedies, in an expedient manner to resolve situations when things go wrong.

267. We share a moral duty, as fellow citizens, to protect people who are vulnerable. We share a social contract between the Government of New Zealand and its citizens.

268. I am prepared to assist with this process in any way that is considered useful.

END.

LIST OF ANNEXES

- i. Letter from ACC to Val Forster, accepting cover for an injury suffered on 4 August 2005
- ii. GP notes from first presentation of Mrs Forster following her accident on 4 August 2005
- iii. ACC M-41 referral from GP to Physiotherapist.
- iv. Extract from Volume I of *ACC Legislation, Policy, Procedures and Systems: A Case Review*; Forster, W. London, United Kingdom, June 2006
- v. ACC 32, originally sent from Physiotherapist to ACC requesting further treatments, this copy was sourced from Office 22, Northern Processing Centre, Med fees unit showing that the revision was declined 28/11/2005.
- vi. Individual Rehabilitation Plan provided by ACC to Val Forster on 22/11/2005
- vii. Decision Letter declining further physiotherapy treatment from Sally Gordon, ACC to Val Forster, 28/11/2005
- viii. Email, from Warren Forster to Sally Gordon, ACC Clinical Advisor regarding her qualifications and position within ACC and whether she examined Val Forster. No response was received.
- ix. Standards of Ethical Conduct, New Zealand Physiotherapy Board
- x. Letter, Warren Forster to ACC, 7 December 2005
- xi. Statutory Declaration 1, Warren Forster 7 December 2005
- xii. Statutory Declaration 2, Warren Forster, 7 December 2005
- xiii. Pathways Notes for claim A5013747329, Version Printed on 24 January 2007
- xiv. Letter from Dr Bjornholdt to ACC, 8 December 2005, along with ACC 45 that was received three times by ACC and never processed and an ARC18, claim for entitlements to weekly compensation, which was not processed by ACC.
- xv. Review Application for review 43478, of ACC’s decision of 11 November 2005, lodged by Warren Forster on 9 December 2005.
- xvi. Memo to ACC Whangarei from ACC Review Unit, 13 December 2005

- xvii. DRSL notice of hearing for Review Application 43478, 9 December 2005
- xviii. ACC 202, Admin Review Cover Sheet, Review 43478 dated 15/12/05
- xix. Letter from Mr Brent Forster “To Whom it May Concern,” 12 December 2005
- xx. Statutory Declaration of Mrs Val Forster, 12 December 2005.
- xxi. Transcript of Review Hearing for Review 43478 that took place on 14 December 2005, containing hundreds of errors and omissions.
- xxii. Contact details of Wordwave and contact details of Maggie Keeves, who transcribed, certified and verified the review hearing record.
- xxiii. Extracts of Advice provided from ACC Whangarei Branch to ACC’s Chief Complaints Investigator dated 27 July 2006
- xxiv. Emails, DRSL “Evidence” produced on 2 August 2006 is provided to ACC Branch staff and ACC CEO’s Office Staff on 4th August 2006.
- xxv. “E-Works “Activity Log, provided by DRSL to ACC on 2 August 2006 following request from ACC. This document is incomplete and appears to have been falsified.
- xxvi. Emails between Michelle Donovan and Tanya Cosgrove, DRSL employees on Tuesday 8th August 2006
- xxvii. Example of the “Blacked out” information provided by DRSL on 15/9/2006
- xxviii. ACC “Submissions” and “evidence” for review provided on 8 August 2006, regarding ACC’s decision of 7 August 2006 that deemed review decisions do not exist.
- xxix. Agreement for the Provision of Review Services between ACC and its wholly owned subsidiary, including all schedules provided by the Corporation following an Official Information Act request. It appears that Schedule 2 and 3 of this document are incomplete.
- xxx. Individual Base Salary Employment Agreement between DRSL and Reviewers.
- xxxi. Letter, Barry Davis, Branch Manager, Whangarei Branch to Warren Forster, 11 August 2006.

- xxxii. Affidavit, Warren Forster, 8 August 2006, sworn at the High Court of New Zealand in Whangarei
- xxxiii. Affidavit 1, Valerie Forster, 8 August 2006, sworn at the High Court of New Zealand in Whangarei
- xxxiv. Affidavit 2, Valerie Forster, 8 August 2006, sworn at the High Court of New Zealand in Whangarei
- xxxv. Review Submissions lodged by ACC at Review 43478, on 14 December 2005.
- xxxvi. Review Submissions presented by ACC to the pre-hearing held on 9th August 2006 as being the submissions lodged by them at the hearing on 14 December 2005.
- xxxvii. Notes made by Valerie Forster, following the “pre- hearing” on 9 August 2006.
- xxxviii. Letter, Aisha Dean, DRSL to Warren Forster, 8 September 2006.
- xxxix. Summary of Meeting of 18 September, Warren Forster.
- xl. Review Submission, Warren Forster, Review 44669, ACC’s decision to decline Physiotherapy, 28 September 2006.
- xli. Review Submissions, Warren Forster, Supplementary Submissions, 28 September 2006.
- xlii. Letter, Warren Forster to Michelle Donovan, DRSL Reviewer, 15 August 2006.
- xliii. Review decision, issued by Michelle Donovan regarding “Cover”.
- xliv. Single Review Decision of Michelle Donovan, which purports to make a single review decision regarding two review applications that were purportedly processed by Michelle Donovan in accordance with Part 5 of the IPRC Act. This “decision” relates to RA 44977 (Individual Rehabilitation Plan) and 44669 (Physiotherapy).
- xlv. Notices of Appeal including for RA 44977 Individual Rehabilitation Plan Review decision and RA 44669 Physiotherapy review decision, Lodged in the District Court, December 2006.
- xlvi. Bundle of Documents including records of communication between Warren Forster, the District Court and ACC Jan and Feb 2007.

- xlvi. Letter, Neil McKellar, CEO of DRSL to Warren Forster dated 30 Jan 2007 including the “adjournment guidelines.
- xlviii. Letter, Paul Miller, Information Officer, ACC to Warren Forster dated 15 Feb 2007.
- xlix. Page 628 of Extract from Volume I of *ACC Legislation, Policy, Procedures and Systems: A Case Review*; Forster, W. London, United Kingdom, June 2006
- l. Framework for the Analysis of the Endorsed Provider Network, Report to ACC from the NZ Institute of Economic Research Inc. May 2002
- li. New Zealand Acute Low Back Pain Guide, Published 1 June 2003, Page 1 and 2.
- lii. New Zealand Guidelines Group, Printed from www.nzgg.org.nz - Low Back Pain Guide is not evidence based, consensus based or subject to consensus review. Including example of guideline cover which shows that other guidelines are evidence based.
- liii. World Confederation of Physical Therapists, Keynotes, Evidence Based Practice – 2, The New Zealand Experience. Published London, 2005.
- liv. Letter, Warren Forster to Dr White, ACC CEO, 6 July 2006.
- lv. Letter, Ku Seymour, Chief Advisor, ACC CEO’s Office, to Warren Forster, 31 July 2006