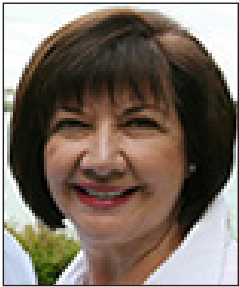


## PRESENTERS



### **Her Honour Judge Denese Henare, District Court, Auckland**

Judge Henare (Ngāti Hine, Ngapuhi, Ngāti Kahu) was appointed a District Court Judge on 30 October 2013. She has been a member of the New Zealand Bar Association since 1974 and served on many committees in the public sector including as a member of the Royal Commission on Contraception, Sterilisation and Abortion. Judge Henare was formerly a lawyer for Air New Zealand, a Law Commissioner and member of the Refugee Status Appeals Authority. She has practised in the areas of Māori land law, administrative law, aviation law and public law. Judge Henare was the principal legal adviser to Waikato Tainui in their Treaty claims and settlement negotiations on fisheries, forests, coal, raupatu lands and the Waikato River. Since 2018, she has been the Liaison Judge for Accident Compensation Appeals, District Court. In 1997, Judge Henare was awarded the Officer of the New Zealand Order of Merit (ONZM).



### **Brittany Peck, John Miller Law, Wellington**

Brittany specialises in ACC law, particularly mental injury and treatment injury claims, appearing from review level to the Court of Appeal. She also practises in the criminal, mental health, and civil jurisdictions. Brittany is a member of the NZLS ACC Committee and is a volunteer lawyer at Wellington Community Law Centre.



### **Peter Sara, Peter Sara Lawyer, Dunedin**

Peter is an ACC specialist lawyer and convenor of the NZLS ACC Committee. He is committed to law reform and encouraging practitioners to become involved in ACC work.

# CONTENTS

<b>1. OVERVIEW</b>	<b>1</b>
THE NEED FOR LAWYERS IN TREATMENT INJURY CASES	1
THE PRACTICE GUIDELINES	2
<i>Evidence addressing the key issues</i>	3
CONTEMPORANEOUS DOCUMENTS	4
WITNESS EVIDENCE	4
CONCLUSION	5
<b>2. INTRODUCTION</b>	<b>7</b>
<b>3. MEDICAL MISADVENTURE</b>	<b>9</b>
<b>4. TREATMENT INJURY</b>	<b>13</b>
TYPES OF TREATMENT INJURY	13
DEFINITION OF TREATMENT – s 33	13
REGISTERED HEALTH PROFESSIONAL – s 32(1)(A)	14
PHYSICAL INJURY	16
CAUSATION – s 32(1)(B)	17
FAILURE MECHANISMS	19
FAILURE TO OBTAIN INFORMED CONSENT	20
PROPER TREATMENT	23
<b>5. EXCLUSIONS</b>	<b>25</b>
DID NOT ACHIEVE DESIRED RESULT	25
WHOLLY OR SUBSTANTIALLY	25
NECESSARY PART	25
ORDINARY CONSEQUENCE	26
RESOURCE ALLOCATION	28
UNREASONABLE WITHHOLDING OF CONSENT	29
<b>6. CLINICAL TRIALS</b>	<b>31</b>
<b>7. SECONDARY INJURY FROM INFECTION</b>	<b>33</b>
<b>8. MENTAL INJURY CAUSED BY PHYSICAL INJURIES DURING TREATMENT</b>	<b>35</b>
<b>9. DATE OF INJURY</b>	<b>39</b>
<b>10. SOME SPECIFIC CATEGORIES OF TREATMENT INJURY</b>	<b>41</b>
PROGRESSION INJURIES (EG TUMOUR)	41
LOSS OF CHANCE	43
INJURIES TO BABIES DURING BIRTH	44
FAILED STERILISATION	44
<b>11. INITIAL ASSESSMENT AND CONVERSATION WITH CLIENT</b>	<b>47</b>
<b>12. COSTS AND FUNDING</b>	<b>49</b>
<b>13. EXPERTS AND EVIDENCE</b>	<b>51</b>
<b>14. TIMEFRAMES</b>	<b>53</b>
<b>15. PROFESSIONAL HEALTH AND SAFETY</b>	<b>55</b>
<b>16. APPENDIX: TREATMENT INJURY CASE STUDIES</b>	<b>57</b>
CASE STUDY 1 – ORDINARY CONSEQUENCE AND INFORMED CONSENT	57
CASE STUDY 2 – ORDINARY CONSEQUENCE	58
CASE STUDY 3 – INFORMED CONSENT	58
CASE STUDY 4 – ORDINARY CONSEQUENCE	59
CASE STUDY 5 – MEDICAL ERROR	60