

5.2. Annex: Case studies provided by CLCA

These 39 examples of particular cases, have been edited to shape them for this purpose of illustrating the range of service offered by the Community Law network. In the process, a degree of background and colour may have been lost. For confidentiality reasons, names have been changed.

Janice and the cell phone - consumer

Janice lives alone with very limited English, and had only gone to school for a couple of years in her home country before coming to New Zealand. She was scammed by a woman who deceived Janice into signing a 24-month mobile phone contract which included the latest smartphone. The woman took the phone and Janice never saw her again. Janice was left owing over \$2,500 to the mobile phone company.

She approached the Law Centre for help. The Centre helped her prepare evidence to file a police complaint, and entered into discussions with the phone company and the debt collector. It was settled that Janice would only pay \$100 of the debt and the rest would be cancelled.

G & L and their first home – tenancy, property and financial

G & L are in their late 40s with several grandchildren. They have always been a low income family. In June 2008, they entered into what they believed was a rent to buy for their first house, using their life savings of \$1,000 as a deposit. The ongoing cost was \$400 per week, plus all repairs and maintenance. They knew market rent was around \$260 per week. While the promotional material talked about rent to buy, the agreement was just an option to purchase. Eighty dollars of the \$400 was to be put towards a ‘deposit’. Under the contract, in the event of a default all monies were the landlord’s and the option to purchase no longer existed.

Late 2011, the landlord (who has 20 or so other properties), went to the Tenancy Tribunal to evict G & L as they were in arrears. The landlord sought compensation for damages to the property, plus cleaning. He claimed that the whole house needed repainting from top to bottom, as well as new curtains, carpets and landscaping.

The Law Centre made a Cross Application on G & L’s behalf, claiming:

- the option to purchase was a prohibited transaction pursuant to section 137 of the Residential Tenancies Act
- return of the \$80 per week
- that market rent was estimated at only \$260 per week
- that market rent was all that was due
- exemplary damages for the landlord’s breaches of failure to maintain the property and of acting in contravention of the Act were also sought.

In addition:

- G & L repaired legitimate damage themselves and cleaned the property
- the Centre defended the damages claim
- the Centre defended the eviction claim.

This was largely successful, as G & L were awarded \$10,692.14 (after an award to the landlord of \$250), the rent was set at market rates, and the eviction dismissed.

G & L have since left the property after giving notice. The landlord, however, failed to pay the sum ordered, saying he was appealing the decision. There was no appeal. The Law Centre assisted G & L to obtain a charge over the property. (Of note, the landlord re-advertised the property with a weekly rental of \$245.00 – its true market value.)

Taking advantage – tenancy and financial

The client signed a tenancy agreement on behalf of a "friend," who was unwilling and unable to enter into a tenancy agreement due to her precarious finances. She assured the client that she would pay the rent. It turned out this friend had induced the client to enter many transactions to his financial detriment. She defaulted on rent running up thousands of dollars of debt.

A tenancy agreement is a common transaction which would ordinarily be enforceable. However, as the client presented, it was readily apparent that he had an intellectual disability. His support worker advised he was unable to read or write and had very limited comprehension; this left him open to people who took advantage of his good nature.

The Centre drafted submissions to empower the client with the assistance of his support worker; putting forward the argument that he lacked capacity to enter into the agreement. The Tenancy Tribunal agreed and found for him.

The landlord appealed to the District Court. Again, the Law Centre drafted submissions and gathered evidence. The Judge found for the client and dismissed the appeal. The client would have been unable to advance the complex arguments around intellectual incapacity to contract and navigate the tribunals and courts without assistance.

Helicopter pilot – medico legal

A client had been a helicopter pilot in New Guinea and then got tropical malaria which caused him to have a stroke. He has been unable to work since and on a sickness benefit. His company had insured him and others under a 'block' lump sum compensation policy for disability. The policy was with Lloyds of London who used 'every trick in the book' not to pay.

Eventually the Law Centre had the UK Insurance and Financial Ombudsman review the matter and he 'requested' them to pay (apparently he could not order it - only a Court could do that) and they did pay.

Fall from a box - ACC

The client's 36 year old son passed away after falling from a box. In the incident (accident), he scratched his leg, but it was imagined that this was a minor injury that would resolve itself. Less than 48 hours later he was dead. He had contracted a secondary infection, necrotising faciitis, which took his life very swiftly and left his family shocked and bewildered.

The day after the fall his leg ached severely and his mother took him to their doctor, who queried whether the abrasion had caused sepsis. However, the ACC claim form has room for three diagnoses, so he listed other concerns such as possible tendon damage. The doctor failed to note the "abrasion", although his notes clearly recorded this. Antibiotics and pain medication were prescribed.

Later on, he felt worse and his mother was worried. He was crawling as walking was painful, and soon found he could not lift his legs. An ambulance was called

immediately. When it arrived, minutes later, he could not lift his arms either, and was incoherent and semi-conscious. He died at 11pm that same day from multiple organ failure. On admission, the scratch on his leg was a large ulceration the hospital believed was a serious burn from a hot water bottle. It covered most of his lower calf area.

The client, Mum, came to see the Law Centre in January 2011, she had been trying to get ACC to pay a grant towards her son's funeral since August 2010. She was bereft, depressed and undergoing counselling. As an invalid's beneficiary, she had paid what she could towards his funeral, but she was struggling to meet the rest of this debt, over \$5,000.

ACC's stance was that, as the Coroner referred to his death as due to 'natural causes', although he had cover for his injury itself, the injury had not resulted in his death. The evidence showed this was plainly wrong. After submitting further evidence from his GP and pointing out the obvious connection between the injury and his death, ACC accepted cover in June 2011 (after a delay in part caused by the Christchurch earthquakes).

Mum was very happy. She would get the funeral covered and around \$600 repaid to her as the grant was more than the outstanding debt. She said she would buy food, as it had been three weeks since she had been able to afford to purchase groceries.

Minimum wage waitress - employment

The client was a 17-year-old female, living at home with her mother.

She had found a job as a waitress on minimum wage (\$13.50). She had a written employment agreement and was to work a minimum of 35 hours per week. The employment agreement had a trial period but it was a performance based trial (s67) not the 90-day trial period (s67a).

Besides the odd job here and there this was her first full time job. She worked for 6 weeks (31 August – 17 September 2011) when at the end of her shift all the waitresses were called together by the Manager and told one of them was being fired that night. The client was then dismissed.

She was so distraught she had to be picked up by her mother. The Manager spoke to the mother and apologised for having to dismiss her and said that if he did not the owner was going to dismiss him. He also said that the owner had instructed him to dismiss her because she served the owner the wrong drink the previous evening.

Effectively there was no process; she was not made aware that her employment was at risk, no allegations were raised before dismissal; and she had no opportunity to say anything in her defence.

She was upset with the dismissal and contacted the owner for the reason she was dismissed. The owner responded by letter saying that she had been dismissed because she was on the 90-day trial period (no process is required by the employer – s67A).

A personal grievance was raised without response from the employer. A request for mediation was made due to no response from the employer for 2 weeks. The Department of Labour (DOL) contacted the employer and he agreed to mediation but would not agree a date. Eventually the employer stopped responding to DOL and mediation did not go ahead.

An application (Statement of Problem) was filed with the Employment Relations Authority (ERA). The employer did not respond nor attend the teleconference. An investigation meeting date was set.

To ensure that the employer had no excuse not to attend the investigation meeting, the Law Centre also served the employer with the Statement of Problem, Bundle of Evidence and Notice of Hearing at the last known address for service on the Companies Office records. An affidavit to this effect was also filed with the ERA.

The employer failed to attend the investigation meeting. The Authority Member attempted to contact the employer at the last known phone number without success. The Authority Member was satisfied that all papers had been served on the employer and the investigation meeting went ahead without the employer having reasonable excuse for not attending.

Our client was successful and awarded \$6,142.50 (gross) lost wages and \$4,000 hurt and humiliation. Subsequently the employer's business was put into liquidation and the Centre assisted the client in lodging a claim with the liquidators.

(One thing not mentioned in the Determination, but raised at the Investigation Meeting is that the wrong drink server was not the client: she took over from another waitress having problems with the owner and that waitress served the wrong drink.)

Domestic Purposes Benefit, Care of Sick and/or Infirm ('DPB-CSI') - welfare

The client was informed by Work and Income New Zealand ('WINZ') that she was not eligible to apply for the DPB-CSI. She wanted assistance with:

- proving eligibility for the DPB-CSI to WINZ, and
- seeking retrospective payment back to the date that she initially tried to apply for the DPB-CSI, and
- acting as her Agent at WINZ.

The client's income reduced significantly when she quit her job to care for her daughter full time. The additional money from the DPB-CSI, although not much more than the DPB-SP (just over \$40 per week), went on living costs and her daughter's special needs. Sometimes there was not enough money for petrol to attend the Law Centre. The application process took up to 6 months and was likely to have increased stress levels and hardship in the family home.

The client's daughter suffers from severe Separation Anxiety and Obsessive Compulsive Disorder ('OCD'). She has also recently been diagnosed with General Anxiety Disorder. The client's care for her daughter is 24/7 and she has struggled with these diagnoses and high needs relating to associated behaviours since she was six years old (2006). Although the client worked on and off during those years she frequently took her daughter to work or had to quit work in order to attend to her needs.

Due to the need for the client to care for her daughter at all times, she was required to leave her job and apply to WINZ for assistance.

On 30 November 2011 the client applied for the DPB-CSI at WINZ. The application was received by a WINZ Case Worker; it was put on hold awaiting the DPB-CSI medical certificate to be completed.

On 9 December 2011 the Case Worker told the client that she was not able to apply for the DPB-CSI and that she could only qualify for the DPB-SP. The client never received a formal letter stating that her application had been declined and so she was unable to apply for a review. The DPB-SP entitlement commenced on 3 December 2011.

The Law Centre understood that no medical information was ever submitted to WINZ to establish the Medical Qualification for the DPB-CSI. This was due to the daughter's Psychiatrist misunderstanding a part of the Medical Qualification for the DPB-CSI.

On 21 February 2012 the client contacted another Case Worker at WINZ to ask for help. This Case Worker was happy to contact any health professionals involved in the daughter's case to support the Psychiatrist and Clinical Psychiatrist with any misinterpretation they may have had with the Medical Qualification section of the DPB-CSI application.

The client met with a different Psychiatrist, who reviewed the case and agreed to sign the Medical Qualification for the DPB-CSI application.

On 7 June 2012 the client contacted the second Case Worker who confirmed that there was evidence on her file at WINZ that she had applied for the DPB-CSI on 9 December 2011; however WINZ did not follow usual protocol by sending out a declining letter. As the client did not receive written notification she was disadvantaged as the 3 month period within which to apply for a review had lapsed.

The client was therefore seeking retrospective payments for the DPB-CSI dating back to about 9 December 2011 as this was the time that she applied for and should have qualified for the DPB-CSI.

The client first contacted the Law Centre on 16 May 2012. She provided the Centre with copies of correspondence between her and WINZ, in particular with the second Case Worker. She also provided an indepth description of her daughter's illness and the way that it affects their everyday lives.

The Law Centre contacted the second Case Worker on behalf of the client and requested copies of medical records and a letter from the daughter's psychiatrist. The second Case Worker was also able to confirm that the client did attempt to apply for the DPB-CSI on 9 December 2011.

The Law Centre were able to establish that although the client did attempt to apply for the DPB-CSI in December 2011 she would have to reapply if she wanted the application to be considered. The Law Centre had some difficulty at this point as the client was unsure whether or not she would be able to find an alternative psychiatrist to assess her daughter's condition and complete the medical qualification component of the application. Fortunately, the client was able to resolve this issue as stated above.

At this stage the Law Centre were not acting as the client's 'agent' for WINZ and therefore WINZ had requested that the client attend an appointment with them in order to complete the DPB-CSI application forms and discuss the DPB-CSI matter. The client informed the Law Centre that she did not feel comfortable attending this appointment and she felt that WINZ were unable to understand her situation and no longer wished to assist her. Therefore, the client requested that the Law Centre act as her agent for the rest of the matter. The Law Centre provided WINZ with the appropriate agent documentation.

The Law Centre assisted the client with drafting a ‘Carer Statement’ WINZ require in order to obtain retrospective payment for the DPB-CSI. The Carer Statement described in detail the need for the client to care for her daughter 24/7 as well as a description of their everyday lives.

In July 2012 the Law Centre contacted WINZ and requested an appointment with a person at management level. On 7 July 2012 the Law Centre met the Assistant Manager and the client’s Case Worker. The Law Centre provided the client’s completed application for the DPB-CSI as well as the Carer Statement. The Law Centre discussed the client’s circumstances and the length of time that it has taken her to make any progress with her case.

The Law Centre was informed that WINZ would transfer her to the DPB-CSI and that they would send her application to Wellington to be assessed for retrospective payments dating back to about 11 December 2011. The Law Centre was informed that this process could take some months. On 17 July 2012 the client informed the Law Centre that the payments for the DPB-CSI had commenced although she was still waiting to hear from WINZ regarding the retrospective payment. The client was very satisfied with this result.

Deportation - immigration

Ms Y applied for residence based on marriage in early 2010. She and her husband had a child in 2008. In November 2010 the relationship broke down before she obtained her residency. Ms Y’s interim work visa expired on 10 May 2012 when her application for a work visa, lodged on 1 February 2012, was declined. She was therefore unlawfully in New Zealand and faced deportation. She had no income but was not eligible for legal aid because of the nature of the proceedings. Her relationship property claim had not been resolved.

The CLC represented her with a Section 61 application and an appeal to the Immigration Tribunal on humanitarian grounds – the impact on the client and her son if they were forced to return to her country of origin, Zz. It would be difficult for the client to be available for court hearings regarding her relationship property case which would prejudice her chances of obtaining a fair settlement. Her son has a medical condition. It is unlikely that he will be able to access equivalent medical care in Zz. Her son would also receive a far worse education. Furthermore, as Zz do not recognise dual citizenship, her son would be forced to revoke his New Zealand citizenship if he were to return to Zz. As a result of the appeal Ms Y received an additional one year work visa.

Work injury – benefit

A woman fell through a skylight at a restaurant trying to close a window. The 5 metre fall broke one leg badly, smashed the other heel and damaged her back. She was in plaster for nine months and could not work. She was receiving both benefits and an income related payment from ACC. She said benefit staff knew about the ACC payment as she told them. The benefit agency sought to recover \$25,000.

The local Law Centre established the agency was not entitled to recover the sum under its own legislation and it was written off.

Subscription – consumer

Margaret, an elderly woman made it clear on many occasions she wanted to cancel her subscription but the mail order company continued to send her books, and charge her a subscription for the following year.

The Law Centre was able to resolve the situation the day she brought it to their attention, by contacting the company. They deleted the account and refunded the money in dispute.

Grievance - employment

A client approached the Law Centre and was given advice that she had a grievance and that it would be worthwhile to proceed to the Tribunal. Further advice from the Law Centre supported the client by re-writing the client's story as a cohesive case that soon led to a positive result.

Redundancy - employment

A client came into the CLC upon referral from a large local law firm which sends through a number of clients every year. The client met the CLC's financial criteria, as they had been reduced to accepting food parcels and help from neighbours. The client had been made "redundant" without due process. An added complication was the client being on ACC at the time of "redundancy".

The CLC provided liaison with ACC and successfully resolved issues of entitlements (which also meant, with the client's permission, that ACC were appraised of the employment issue, were advised that the CLC was working on settlement for that, and in addition facilitated a really good meeting with an ACC case worker to form a training and "back to work" programme that was supportive and helpful to the client).

The CLC requested mediation with representatives of the employer and met with the employer, outlined issues with false "redundancy" and the processes utilised. Settlement agreed meant the following for the client:

- Pay-out of all leave entitlements immediately.
- Pay-out of compensation for humiliation, loss of dignity etc.
- Positive reference.
- A gag order for the employer and associates who had been spreading rumours around a very small town about the client – all of which were untrue and harmful.
- Public apology made to the client through the local paper for those rumours.

Total package \$19,000 + ACC benefits.

Savings – no ERA hearing, no need for unemployment benefit for client. Also, unintended benefit of educating employer about rights and responsibilities (and they have since hosted one of the CLC's Governance workshops in the town where they are situated!)

Wrongful death claim – ACC and medico-legal

The client – a pensioner on superannuation – had claimed ACC for wrongful death of spouse via treatment injury by hospital. The claim was declined by ACC because treatment injury "not proven".

The CLC requested all documentation from ACC and the DHB and lodged a review request based on both the ACC file and the hospital files received.

Prior to the Dispute Resolution Service (DRS) hearing, the CLC facilitated a meeting with hospital staff where startling admissions were made about the care of the deceased spouse. A complete breakdown of communication between DHB and ACC was also apparent.

The CLC wrote a submission for the DRS review and attended the hearing as a representative for the client.

The ACC decision was quashed outright, with some rather barbed comments directed at both the DHB and ACC's handling of the case.

A total settlement of \$15,500 was paid out to the client. The CLC is now taking (on behalf of the family) the DHB to the Health and Disability Commission over the treatment injury issues, as well as the way they treated the surviving spouse.

Savings – based on the evidence, this case could have gone to the civil court had the DRS not found in the clients favour. Empowerment of a disillusioned elderly man (and proving that the system can work effectively for an ordinary family), as well as provision of peace of mind to the client and family about what actually happened to their loved one, is immeasurable.

Accident consequences - consumer

A Centre has dealt with two similar incidents in the past year of an older woman being hit by a car and then being pursued by the drivers' insurance companies for reimbursement of the damage to the vehicle. In both cases the sum claimed was around \$1,300-\$1,800.

One of these stories ended up in the New Zealand Herald as follows:

An 83-year-old spent three weeks in hospital with serious injuries after she was hit by a car as she crossed the road to pick up her Christmas ham - and was then smacked with an \$1,800 bill by the driver's insurance company.

But yesterday, after being contacted by the Herald, the insurance company backed down.

The woman had serious internal and head injuries and cuts and bruises all over her body after she was hit by the car in Glen Innes on December 21 as she was going to the Nosh food store on Apirana Ave.

"I parked my car across the road. I got out of the car, locked it and stood with my back to the car. I looked right and there was nothing coming. I looked left and there was nothing coming. I remember thinking to myself 'fancy that, there's no traffic on such a busy road at 11.20am, four days before Christmas', " she said.

"I know I stepped out to cross, but I don't remember anything after that.

I must have just stepped right out in front of the car, she must have come from a driveway after I checked the road."

The woman bounced off the bonnet, over the top of the car - which was travelling at about 20km/h - and landed on the road behind it.

"I was terribly lucky I didn't break any bones, very lucky I wasn't killed," she said.

Not long after she was discharged from Auckland City Hospital she was contacted by AA Insurance.

"They told me about the damage to the car and how much it was going to be, and that I was liable and had to pay it. I couldn't believe it.

"My husband has cancer and I'm looking after him at home, my life isn't easy. This was the last thing I needed - I didn't need any more stress in my life."

The woman was told her house and contents insurance should cover the damages. But, when she and her husband moved into a retirement village they cancelled their policy.

"The chances of fire or burglary are zilch so we cancelled all of that."

She sought legal advice and had the CLC contact AA on her behalf.

"Her savings would be totally wiped out by this claim," he said. "I have spoken to the insurers on two occasions and explained her circumstances. They insist that she is liable."

But yesterday, after Herald inquiries, AA Insurance conceded there was no case against the woman.

"We absolutely do not, now I've found out about this, intend to pursue the woman," said the head of customer relations.

"That claim should have been flagged or raised by one of our recovery consultants. It's certainly not a case we would normally pursue.

"We're obviously sorry for causing the woman the stress she has been caused and we will contact her immediately to resolve the situation and apologise.

"We are also going to review our internal processes to make sure a similar situation doesn't arise in the future. It shouldn't have happened."

When told about AA's turnaround the woman was overjoyed.

"It's absolutely wonderful, it really is a relief," she said. "I can't tell you how much this means."

Insurance companies will classify matters in which the victim of an accident is over 65 years of age as a 'sensitive matter'. Such files will be referred to a manager and are generally not pursued. In the first instance in June 2013, the representative of the insurance company repeatedly refused to consider the age and financial circumstances of the victim and it was only when the media became involved that they resiled from their position. In the second instance in March 2014, the insurance company representative agreed not to pursue the matter when the Centre pointed out that she was 69 years of age.

Medical bill – ACC

One of the larger cases, in terms of the financial impact to a client, involved a new immigrant to NZ who was faced with a potentially devastating debt of over \$100,000 for medical treatment.

This client was skilled in the hospitality trade and had arrived in New Zealand as a skilled worker with his wife and young family.

The client began working in the hospitality industry but was unfortunate to fall subject to two separate work place injuries. During the course of his work he tore a tendon, and on a separate occasion his arm was crushed with a 15kg weight.

As a result of both of these injuries, the client claimed ACC through his accredited employer, and sought treatment. The course of the treatment involved physiotherapy and steroid treatment.

Following these treatments, the client felt very unwell. He was in pain and had difficulty breathing. He sought medical treatment but no infection was located. The client's neighbour, a medical professional, was concerned for his wellbeing and insisted she take him to the emergency department at the hospital.

At the hospital, it was discovered the client was suffering sepsis / necrotising fasciitis (otherwise known as the 'flesh eating bug'). The client was in multi-organ failure and admitted to the Intensive Care unit knocking on deaths door. The client spent 2 weeks in hospital undergoing several surgeries for washout and debridement. Thankfully, the skilled staff at the hospital managed to save not only his arm, but most importantly his life.

The client was eternally grateful for the skill and care received however, due to the fact he was on a work visa, he was not eligible for publicly funded healthcare. The client's bill for his stay in Intensive Care exceeded \$100,000. As the infection was the result of treatment for a work place injury, the client sought ACC cover through his accredited employer. This was declined stating there was no link between the work injury and infection.

The client sought assistance at the CLC. The solicitors made submissions and represented the client at several ACC reviews. Questions arose over jurisdiction and the causative link which required both medical evidence and legal submissions. The reviews and submissions back and forth covered a period in excess of 2 years. Much to the client's relief, the outcome was a successful review, meaning the accredited employer had to cover the client.

Although this decision is now subject to an appeal by ACC, the client is grateful for the CLC's ongoing support. By no means could he afford legal representation to fight ACC and further, the technicality of the situation would have required expert legal assistance for the ordinary New Zealander let alone someone who is new to this country.

Trustee hearing - rights

YouthLaw received a phone query in late July 2013 from a young boy A's mother. He was 13 years old and had been diagnosed with Asperger's syndrome, dyslexia and a number of behavioural learning difficulties.

A's mother reported that A had been well supported in his special educational needs until he transitioned to high school when funding to enable wrap-around support was reduced. Following an incident which involved a tussle between a teacher and A over A's skateboard, A was suspended for what the principal deemed to be gross misconduct pursuant to Section 14 of the Education Act 1989.

A then attended a School Board of Trustees hearing following the suspension where the Board made the decision to exclude A from the High School, despite being under the age of 16 and legally required to be enrolled on a roll of a local mainstream school,

and indeed entitled to an education adapted to his special needs under Section 8 of the Education Act. After the Board meeting, A remained out of school for a number of months. Although A was engaged in some alternative therapy, and a few hours a morning at tuition services Kip McGrath, A did not receive any systematic or regular schooling. The remainder of A's time was spent catching public transport on his own to various parts of Auckland in neighbourhoods where A's mother felt concerned for his safety.

The Board of the school cited the reason for the decision to exclude A as the fact that A had a long history of complex behavioural and learning needs which required a significant level of support and the mainstream setting being unable to provide sufficient resourcing to ensure that A's needs could be met and ensure the safety of other students and staff in the school.

YouthLaw provided advice to A's mother that:

- It was questionable whether the incident in fact met the high statutory threshold of gross misconduct which justified disciplinary action to suspend pursuant to section 14 of the education act;
- That there appeared to be procedural and substantive defects in the process and decision made by the Board. In particular, the failure of the Board to consider the impact of A's special educational needs, the lack of adherence to principles of natural justice and lack of appropriate and adequate reasoning and documenting of the decision.; and further;
- That the decision was arguably discriminatory as A's disabilities seemed to be a motivating factor for the Board's decision.

When it became apparent that the Board would not reconsider its decision to exclude A and, given A's pastoral record of exclusion, barred A from acceptance into other local schools, YouthLaw instructed barrister Simon Judd to lodge a judicial review of the school principal and Board's decision. Following a hearing in the Auckland High Court, Justice Faire quashed the decisions of the principal and Board finding that the principal of the school had acted too hastily in moving to suspend A without taking into account the circumstances of A's special educational needs. Further, as a corollary, that the Board's decision had identified procedural and substantive defects. Subsequent to the judgment, YouthLaw continues to negotiate A's transition back into mainstream schooling so that A can obtain a satisfactory and appropriate education.

Fencing – rights and consumer

The client is an intellectually disabled man who is employed by a 'sheltered workshop' Trust, in their mail room. He has been classified by DoL as qualifying to earn less than the minimum wage – so he labours under a double 'discrimination'.

Part of this Trust runs a commercial business arm, manufacturing and installing fences and gates to the public. The client is entitled to access this facility himself – and so empowers himself and his colleagues with a project that allows them to 'compete' in the open market. He happily commissions a fence and gate – his brother draws up the plans – and the Trust fencing team comes along to erect the structures.

However, to his great disappointment, the project is completed to such a poor standard that he cannot close the gates and the trellis fencing begins to very rapidly warp. He and his brother go to see a private lawyer, who due to their financial

constraints, does not even send a letter, but bills them \$255. Months elapse, with the brothers frantically trying to get the fence/gate remedied. Nothing works and their cries fall on deaf ears. It gets worse when the Trust begins to deduct outstanding monies from the disabled staff member's salary, citing a signed "Consent to Deduct" form, which our client quite frankly does not understand.

Some 10 months after the project ended, they arrive at the Law Centre. A quick glance at the photos and plans shows what a disaster they are living with. A meeting with the Trust achieves no positive way forward. The CLC contacts the local Polytech and enrolls the *pro amica* services of their carpentry lecturer, who confirms that the fence/gate are so sub-standard that they cannot be remedied.

A second meeting is held with the Trust, and a final request made to remedy the worst of the project. The response is, as expected, unsatisfactory. So, the CLC sent a letter in terms of the Consumer Guarantees Act, stating that both the materials and service were sub-standard, cannot be remedied and that it cancels the contract, tenders the fencing back and requests a full refund.

Days pass – the poor client misses out having a party at his home due to the shoddy fencing. Then the wondrous email arrives – the Trust will come and remove the fence/gate, refund the client his money, and he gets to rebuild with the free and awesome services of the Poly staff!!

Consumer debt - financial

A finance company had obtained a Court Order stating that Jane was liable for a debt. Jane did not know about this until she received a notice from the Court ordering her to attend an 'examination' to determine how she was going to pay a debt. Jane attended the examination and the Court made an Order that \$20 per week would be cut from Jane's pension until she finished paying the amount of \$12,630.76. Jane was confused. She did not even know why she owed this amount of money to the finance company.

The Law Centre obtained copies of documents from the finance company. Jane had purchased a vacuum cleaner many years before and had failed to keep making the agreed payments. Jane acknowledged this but was surprised by the amount owing. The documents showed that the finance company had added \$10,000 to her original debt. The CLC addressed the matter with the finance company. The finance company acknowledged their error and agreed to have the Court Order varied to reduce the amount owing in the Court Order by \$10,000.

A man who was down on his luck – consumer and financial

A man brought a fairly simple consumer matter of a mechanic not completing work on his car and billing an excessive amount into the CLC. He had purchased the second-hand car on his arrival in New Zealand. The car was averse to travelling uphill. The mechanic took apart and effectively immobilised the car before telling the man the parts were not available in the whole South Pacific. He argued that his actions were that of a responsible automotive technician and forthwith invoiced \$1,400.

The CLC wrote to the original vendor of the vehicle who initially insisted that the vehicle was of acceptable quality for its price and age. A second letter pointing out the finer points of the Consumer Guarantees Act 1993 and the Motor Vehicle Sales and Fair Trading Legislation prompted them to consider the matter more seriously.

In the interim the client had purchased a replacement car for \$600, paid the mechanic \$800 of his bill (he still expected the balance) and travelled south of Auckland to meet his newly born grandchild. Inexplicably he stopped responding to CLC's emails for some weeks. He finally called from an orthopaedic ward. He had serious injuries from a major car accident. He was uninsured and had no recollection of the accident. The other driver said he had been unable to avoid the client as he came out of a drive-way which seemed odd because the client knew no-one in that town. The police suspended his driving licence. While he was comatose he had failed to re-apply for his job contract which expired, putting him out of work. His work included accommodation, so he now had nowhere to stay.

The car vendor, with the CLC's encouragement, has replaced the original car. The CLC contacted the overcharging mechanic who expressed horror at the client's predicament. He agreed to waive storage fees on the dead (by his hand) vehicle. He released the remains upon the payment of a further \$300. The client had the vehicle towed to another workshop that located the required mysterious car component and resurrected the car within 4 hours at a cost of \$65. It is now estimated that that the original car may bring \$6,000, recouping some money.

The client is now merely injured, cannot drive, is unemployed and has nowhere to stay. People who use the CLC service often live on the edge where one or two events can snowball into disaster. The law team has done their best for this man and he is very grateful. Social services workers are now working on his other issues.

The kuia and the hard sell cell phone - consumer

Mrs W commonly known as "Nan" is a 75-year-old kuia who tries to do her best for people and who is much loved by her wider whānau. One late afternoon there was a knock on the door and a young salesman began telling her how she really needed to buy a smart phone. He was so convincing especially when he offered to drop the price from \$399 to \$299 and promised she would have her phone within two weeks. Although Nan struggles to work a television remote, her kids always wanted her to have a cell phone for safety so she decided that maybe it was a good idea. Almost before she agreed the salesman had a contract filled in and ready to go and told her she had to sign both the contract and an authority to direct debit there and then, on the spot. Nan signed.

Later that night Nan sat and read through the contract and when she realised just how much this phone would cost her in the long run she had second thoughts and she decided that on her pension she really could not afford the phone. Part of the contract said, "Notice to Customer: Right of Cancellation," and so she tried to phone the number on the contract but it was after hours and she just ended up talking to the cleaner but she had the right place. She thought *kei te pai* I have got 7 days I'll do it in the morning. At 9.03am next day Nan got help to send an email to the Sales Company saying that due to financial reasons she wanted to cancel under the contract. She kept a copy of this email and the address she sent it to matches the one on the contract.

The weeks passed and she heard nothing further from the company and Nan forgot about it and was just concentrating on Christmas with the whānau. It was about then that she realised that payments were being made to the Company – over \$450 of payments. Nan rang their Auckland number to find out what was happening and why the payments hadn't stopped. The Company blamed Nan saying that the payments had started in September and it was December and she should have noticed that they

were going out sooner and done something about it. They then offered her some other gadget, in Nan's words '*something magic*' for \$600 instead. She refused and asked for her money back.

Nan thought she had done everything right. She had followed the right procedure in the contract and had done it almost straight away and yet the company seemed to be blaming her. She went to the bank and got them to stop the payments and they told her she was entitled to her money so she rang again. This time the company treated her even worse and refused to accept she had cancelled the contract and said that she still owed them \$50! Nan said, "*I told you I didn't want the phone and I don't owe you anything - you owe me my money. I've got the paper here and I'm looking at it where the phone was meant to cost \$399 but you said you would give it for \$299 and I have paid more than that and you didn't even send a phone?*" The company representative on the other end said, "*you're not getting any money back – go get a lawyer, do what you like - I'm hanging up*". Nan said she hung up first because it was one thing she could do – stop him hanging up on her!!

Nan was really stressed out and she couldn't believe how rude they were to treat her like that when she had not done anything wrong. Then she remembered that many of her family had received help from the CLC. She rang and the Centre got involved contacting the Company for a response. The Company said that because their standard practice was to reply to emails in 48 hours, they must not have received the emailed Notice of Cancellation and that if Nan had not heard back from them then she should have followed them up. They also blamed Nan again for not noticing the payments were going out and said that all these contributions (of Nan's money), incurred costs to the Company and so they were charging her "Administration Fees" on the payments. They offered a refund of her money AFTER they had deducted \$82 for their fees. Nan refused the offer and it was only when the Centre began further action, that the Company decided to 'waive the collection fee' and refund the full amount. Nan baked the CLC a cake.

Confused claim – ACC

Client A was declined ACC earnings compensation for an accident he suffered in 2014 due to the former employer having claimed he was not aware of the accident and that the client had been 'fit for work' when his employment ended. The same client had also been represented on a lengthy employment mediation on an unfair dismissal personal grievance which had resulted in a lump sum settlement.

At the ACC Review hearing the CLC lawyer was able to bring medical evidence to verify when Client A had sought medical help after the accident and also satisfy the Reviewer that the employer had in fact been notified of the incapacity prior to termination of employment, and that the employment had in fact been terminated due to 'unsatisfactory work performance' which was itself due to the incapacity from the accident. The former employer's stance had been totally inconsistent. For various reasons, the Review hearing did not take place till 2016 and the Reviewer directed back-dated earnings compensation to be paid which amounted to approximately \$40,000.

School bus no show – rights

A Human Rights mediation was conducted by a CLC lawyer involving a disabled boy who had been abandoned on a school bus for several hours by the driver who had

'forgotten' about him. The school apologised as did the bus company, but the Ministry of Education would not. After a five hour mediation, the Ministry of Education said they did regret the incident and would ensure that all schools and providers had their health and safety plans 'up to scratch'.

Special Education – rights

YouthLaw was instructed by the families of three girls with unique special education needs seeking to challenge the Ministry of Education's provision for difficulties at school. (The 'difficulties' were due to a variety of severe special needs and consequent intellectual disabilities.) The difficulties continued until they were accepted into a special girls' only school where they began to thrive socially and academically.

In 2012, the Ministry of Education (MOE) began the process of looking to closing some special schools, including the girls' school. Consequently, at the end of the year the MOE decided to close the girls' school, despite the school objecting by providing significant research and reports to show girls with intellectual disabilities are at a high risk of suffering sexual abuse if integrated into a co-educational school. Issues were raised around whether the MOE had done enough to meet their obligations under the Education Act and under the Human Rights Act and Bill of Rights Act. YouthLaw was able to mediate for the three girls at the Human Rights Commission and provide a settlement agreement which gave the girls certainty about their future.

Special Education - rights

This case concerns the right of a 7-year-old boy, 'D', to receive special education pursuant to section 9(1) of the Education Act 1989. D was diagnosed with Autistic Spectrum Disorder. However, D was denied ORS eligibility funding under Criterion 5 and 8 as his characteristics were not considered severe enough despite D having a substantive amount of professional endorsement for the application. Consequently, D's parents took the Ministry of Education to Arbitration with the support of YouthLaw, to appeal their decision to decline the two ORS applications that were made. Subsequently, D was awarded funding under Criterion 5 at the High Needs Level and is therefore entitled to funding until he leaves school. Without extensive or individualised one-to-one support D would be unable to access the curriculum or enjoy his education in a meaningful sense.

GST issues for non-English speaker - tax

A senior solicitor recently dealt with a Kiribati couple, Mr and Mrs E, whose English was minimal, and who came to the CLC office bearing a letter and a lengthy IRD computer printout which, including interest and penalties for non-payment, concluded that they owed GST of over \$22,000. The letter was a copy of one from the IRD to their bank, the effect of which was to require that funds were to be withdrawn from our clients' accounts from time to time, to pay the sum claimed by IRD. A considerable sum had already been withdrawn.

Mr and Mrs E had no idea what "GST" was or their obligations if they registered for GST. They brought along a relative, who spoke fluent English. Through the translator, Mr and Mrs E said that some time previously they had opened an account with a direct-selling company. This enabled them to purchase and on-sell the company's products and therefore develop their own direct-selling business. At the outset, the company introduced them to a person whom they described as their "accountant."