

For love, not money



John Miller is a top barrister who doesn't aspire to wealth. What does drive this expert in ACC law?

JOHAN MILLER'S office is crammed with precarious piles of files. They are all in order. He, too, looks hastily put together, another contradiction. The usual trappings of success — appearances, money — are of little interest to Mr Miller, a barrister and senior lecturer in law at Victoria University. Possibly alone in Wellington's law fraternity, he almost prefers not to be paid for the work he does for ACC claimants.

Mr Miller relates to deprivation. His clientele is made up of old people, sick people, overburdened people, never rich people. He steers them through the courts in pursuit of justice from ACC in a spirit of altruism and in an attempt to tinker with the law.

"The ACC scheme is a wonderful one, he says, but "mangled by politicians in the 90s. It lost its way with the push to reduce the tail of long-term claimants."

He suspects ACC officers get a bonus for getting rid of people. Too often, he says, the scheme lets people down and leaves them struggling financially.

Mr Miller goes out of his way not to be better off than he needs to be. Admittedly, he gets his university salary, so he's not exactly penniless, but he feels more comfortable if his struggling clients give him a modest gift, rather than money.

He extols a present of honey and soap from a couple in Whitianga. There was so much soap, he says, as he hands over the second-to-last fragment cake, there was "enough for everyone in the faculty to have some".

"The case he took for the grateful but impecunious Whitianga pair was typical.

"He's an old pilot, must be in his sixties. They make soap out of tea-tree oil and do honey. His wife fell off a ladder and injured herself and had ACC and then, as they often do, they reassessed her. ACC cuts a lot of people off, saying the real cause of their problems is old age and degeneration and not the effect of the accident.



Diana Dekker

"I got her back on ACC and they were charming and sent manuka honey my daughter swears by and two huge boxes of tea-tree oil and lavender soap. Those sorts of things I often like better."

He has a bust of himself in his lounge. His children used to put hats and sunglasses on it. It was made by Nelson sculptor Paul Walsh, "who has one of Kate Sheppard in Parliament Buildings".

The 1986 case that realised the sculpture had far-reaching effects. It involved five brain-damaged children who all required 24-hour care and were entitled to it by law, but were receiving just 35 hours a week. "That meant elderly people, parents of teenagers, were ruining their health."

ACC ended up paying \$216 million to 300 seriously injured people. "I didn't charge the families but got an unexpected gift of money and Paul Walsh did the bust of my head in our lounge.

"I find it satisfying to try to help people using legal skills, to assist people, which I think lawyers should do," says Mr Miller. "It's a pity the brightest and best are taken up by large commercial law firms.

"ACC law is as complex as tax law but because the clients are injured people with no money, that's why I and a few people take it up.

"I'm very lucky to teach at university and I view the ACC work as part of my responsibility. It suits my nature. I find it very difficult to charge people."

A university, he says, "especially

with law students, should be inculcating values.

"If the only value is to make as much money as you can earn... I have students whose heart is in the right place. Even those who go into commercial law firms will hopefully see the light one day.

"No, that's a bit mean. I'm fortunate I can work like I do. In a legal partnership or law firm you often have to do work for clients which doesn't sit well with your values."

He usually has a dual purpose when he goes to court. He wants to help individuals and to use a case as a precedent.

"Instead of writing about how the law should be changed, I prefer to get into court and try to change it."

The law covering medical misadventure was extended after he argued in favour of a family whose mother had died of Aids after a blood transfusion. She passed the disease on to the father, who also died.

"ACC said the mother could claim medical misadventure but they wouldn't cover the father. It was important for the children, now orphans, as their father was the main income earner." Mr Miller keeps a photograph of the children in his office.

SOMETIMES, when he is on the case, ACC settles out of court. He finds this frustrating. "The law is left in an unsatisfactory state but it's good for the claimant." For example, a recent case related to a man who had continued to receive compensation till he was 65, though the law had changed to cut it off. "ACC wanted \$18,000 back. They eventually negotiated for the man to pay about \$4000 and call it quits." The man accepted.

"I quite understand. If we'd lost he would have had to pay back \$18,000."

Mr Miller did that case for nothing, too. "It was an important point, clarifying the law," he says.

"There are other cases where people are reinstated to prevent the court case from going ahead and to

prevent, in my view, establishing a precedent."

He's still convinced ACC is infinitely better than suing for damages as the norm. Without ACC, courts would be inundated and "litigation destroys lives. It's like Lotto. You only hear about the big winners, not about the rest. The vast majority in

judge agreed stuttering would be a problem. ACC had said he was capable of three other jobs stuttering wouldn't affect.

"He went straight on to an invalid's benefit."

Mr Miller says he had no particular affinity for the law when he did his degree.

In one ludicrous case, ACC assessed a man who had heart disease, as well as having had both hips and a knee joint replaced, and decided he could be a fitness trainer, because that's what the man said he wanted to be. Mr Miller pointed out he might also like to be a film star and play opposite Julia Roberts, but it was unlikely. The man's ACC payments were reinstated.

personal litigation get very little. If you don't get ACC cover, theoretically you can sue for damages but it's quite unrealistic for some people, a difficult and costly process."

"In my view it's best to bring as much injury under ACC as possible. ACC is a great scheme. I only see the things that have gone wrong. For the vast majority of cases it moves smoothly and well."

He worries that the "tail" of people getting ACC has reduced by 10,000 to 30,000. Many go on to invalid benefits after having been assessed as fit for a job.

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"A man who was a stutterer, they said could be a salesman. He could have been quite good. You'd probably take 10 of whatever he was selling to get him off the phone. The

He needed the money at the time and talks, almost nostalgically, about days of financial struggle and doing a fulltime law degree while holding down a fulltime job as a law clerk.

MR MILLER was born in Scotland in 1945. His father was a fireman on the railways and aspired to be an engine driver. Lately, Mr Miller has thought his father's experience might have had something to do with him wanting to help people who have suffered accidents. His father had his skull broken when a stone hit him as he was leaning out the window of a speeding train.

"It blighted his life. Everything was put down to 'Hughie's fractured skull'.

"Perhaps that's why I have an interest. I could see how it affected him. They kept him on in a storeman's capacity. That was all he could do.

"Now, New Zealand Rail would flick you off. The jobs are not there and the chances of ACC cutting off your compensation would be quite high as well."

Mr Miller arrived in New Zealand

at 18 as an immigrant, attracted by the £10 fare and the prospect of a six-week cruise.

"It seemed too good to be true. You could come so long as you stayed here two years, and they gave you a job."

He was about to leave for home when the two years were up when he met Stephanie de Montalk, a nurse at Wellington Hospital, now a writer, "and that was it".

They have four children. Their only girl is prominent sportswoman Melissa Moon.

Early on, Mr Miller was a social worker but the pay was insufficient to keep a young family and go travelling. He worked fulltime in Wellington City Council's legal section and studied law in a back bedroom at night.

People used to feel sorry for the Miller family — no money, no car, no fridge, no washing machine, no vacuum cleaner and three children under two, all squashed together in a small house in Karori they could afford because they capitalised on child benefit. When they did get a fridge, its hinges were broken and the door would only open about 15 centimetres.

After his first year, 1970, Mr Miller was awarded the Sweet and Maxwell prize for being top in the law of contract — "a great boost".

Things improved. In 1974, as the best Victoria University law graduate, he was offered a job as a junior lecturer, which he did for two years.

Then the family went to Hong Kong where he lectured in law, missed the open spaces of New Zealand and felt guilty about the privilege attached to the job.

"Tax was low "and they supplied you with a 2000-square-foot apartment you paid a pittance for. We looked out on the South China Sea at a squatter development and it didn't sit all that well, so we came back".

"If we had stayed we might have been millionaires. But would we have been happy?"

It's a silly question from Mr Miller, since it is quite apparent it would have made his life a misery.