

AGGREGATION OF INJURIES

The *Workplace Injury Rehabilitation and Compensation Act 2013* and the *Transport Accident Act 1986* distinguish between injuries and impairments. In both Acts, the definition of ‘serious injury’ requires, for physical injuries, an ‘impairment or loss of a body function’.¹ This definition looks at the functional consequences of any given injury, rather than the extent of physiological change.² Where there are injuries to multiple body parts in a single incident, the court must decide whether those injuries produce a single impairment or loss of body function.³ This is because the definition of serious injury looks at the severity of the impairments or losses of body function as the means of measuring the severity of the injuries.

In *Lexa v TAC*⁴ the Court of Appeal applied the rule that identification of an impairment or body function requires a ‘physical act or operation, not some “applied” activity’.⁵

The result was that a bilateral shoulder injury was not treated as a single injury. The Court held that ‘lifting an object with both arms’ was an applied activity that involved coordinating many different body functions. Therefore the seriousness of each shoulder injury was assessed separately.

Lexa did not discuss or cast doubt on earlier decisions which have held that the spine is a single body part,⁶ or that bilateral carpal tunnel syndrome produces a single impairment.⁷

The Court also closely examined an earlier County Court decision, *Tavendale v Age Co Ltd*⁸ where the incident damaged the plaintiff’s left knee. This caused him to favour his left knee, and put more strain on his right knee, which then became symptomatic. The judge held that both injuries were caused by the original incident. The Court held that *Tavendale* was distinguishable, as the present case did not raise any claim that one injury caused the other injury.

¹ *Transport Accident Act 1986* s 93(17); *Workplace Injury Rehabilitation and Compensation Act 2013* s 325(1).

² *Barwon Spinners v Podolak* (2005) 14 VR 622 [9]–[10]; *Georgopoulos v Silafortis Painting Pty Ltd* (2012) 37 VR 232 [61].

³ *Lu v Mediterranean Shoes* (2000) 1 VR 511.

⁴ [2019] VSCA 123.

⁵ *Ibid* [45], citing *Target Australia Pty Ltd v Maloney* [2000] VSCA 124 [18].

⁶ *TAC v Zepic* [2013] VSCA 232.

⁷ *Grech v Orica* (2006) 14 VR 602; *Sabanovic v Atco Controls Pty Ltd* [2009] VSCA 143.

⁸ [2009] VCC 642.

CONCLUSION

Lexa provides a clear statement of the test for when injuries from a single incident may be aggregated to a single impairment:

A ‘body function’ denotes a physical act or operation, not some ‘applied’ activity.

This Court has therefore distinguished between a physical act or operation (involving a part or some closely connected parts of the body) and an ‘activity’ to which the physical act or operation may be applied. The physical act or operation will be one of a number of physical acts or operations that need to be coordinated and applied in order to perform the activity. A ‘body function’ is therefore distinguished from a higher level activity that combines a number of physical acts or operations.⁹

The distinction between acts and activities demonstrates that the impairment or loss of body function test for physical serious injuries does not provide a licence to aggregate multiple impairments by constructing complex actions that involve an array of separate body parts.

⁹ *Lexa v TAC* [2019] VSCA 123 [45]–[46].