

# Plaintiff Lawyers Unite

Peter Semmler QC

Plaintiff lawyers are the keepers of the common law. They have now united to oppose the further capping and curtailment of common law rights. The Australian Plaintiff Lawyers' Association (APLA) is a national organisation of nearly 600 barristers and solicitors who act for plaintiffs in personal injury and public interest litigation. In addition to the preservation of the common law itself, the other main aim of APLA is to share information and expertise which can be used in the prosecution of common law rights by accident victims.

Over 100 barristers are currently members of the association. The barristers who are members do not, of course, act exclusively for plaintiffs. Indeed, the obligation of barristers to adhere to the "cab rank" rule is acknowledged by APLA. Nevertheless, those who join the association are sympathetic to its aims. These include faster and cheaper access to justice for personal injury litigants, and the retention of the right to jury trials in civil cases.

APLA was formed because of a perceived imbalance between the resources available to defendants including insurers, medical defence unions and government instrumentalities on the one hand, and those available to individual plaintiffs on the other. The imbalance has become particularly acute recently, with the Federal Government's decision to cut more than \$120 million over three years from an already inadequate legal aid budget. While the popular myth may be that the cost of common law compensation is caused by the avarice of lawyers who act for plaintiffs, the reality is quite different. In this country lawyers who act for accident victims are increasingly required to bear the costs of our civil justice system, at least until a successful verdict is achieved. In difficult cases the only way in which deserving personal injury plaintiffs can achieve justice is through the preparedness of their lawyers to bear the financial risk of the litigation. APLA's aim is to make life for those litigants, and their lawyers, a little easier.

APLA members recognise that the special needs of lawyers who act for accident victims are not being met by the various Law Societies and Bar Associations in this country. Because such associations represent lawyers who act on both sides of personal injury litigation, they cannot provide the special services and expertise which an association of lawyers representing the injured can achieve. Nor are the Law

Societies and Bar Associations able to lobby governments and make submissions to enquiries exclusively from the plaintiff's perspective with the same focus and force as APLA.

APLA's lobbying efforts to date have been particularly successful. It was because of APLA's successful lobbying of independent and Labor members of the Legislative Council that a Bill which would have severely curtailed the rights of personal injury plaintiffs to have their cases determined by juries in New South Wales did not become law. An APLA delegation, led by Barry Hall QC, prevailed upon the Reverend Fred Nile and his wife Elaine to oppose the legislation. Their votes were crucial in ensuring that the legislation was not passed in the Upper House.

Earlier this year, as APLA's National President, I made submissions to the Public Accounts Committee's Review of Customer Service in Courts Administration, particularly highlighting the problems for plaintiffs caused by court delays and stressing the need for appointment of more full-time judges. I also made submissions on behalf of APLA at the end of August 1996 to the New South Wales Legislative Council's Standing Committee on Law and Justice in its enquiry into the role of insurers participating in the Motor Accidents Scheme, stressing the need to tighten provisions such

as s.45(2) of the *Motor Accidents Act*.

In Queensland APLA has been leading the opposition in recent months to the implementation of the recommendations of the Kennedy Commission of Inquiry which would severely restrict the rights of injured workers to claim common law damages in that State. Because of this opposition, the legislation in question has stalled.

On a national level, APLA representatives met with Dr Fiona Tito in the course of her Review of Professional Indemnity Arrangements for Health Care Professionals. Up until our input Dr Tito had mainly received submissions from the medical profession and the Medical Defence Unions. I believe that our face-to-face meeting with Dr Tito was critical to her understanding of the importance of the common law medical negligence action to maintaining standards in the health care industry in this country. APLA has also made submissions to the Australian Law Reform Commission's review of the litigation cost rules.

Most recently, APLA has made submissions in relation



*Howard F Twigg, President of the Association of Trial Lawyers of America, is thanked by Peter Semmler QC, President of the Australian Plaintiff Lawyers Association (APLA).*

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to the interim report by the Heads of Workers Compensation Authorities to the Labour Ministers Council which has recommended the abolition of common law entitlements for workplace injuries and a move to a national compensation scheme. APLA has vigorously opposed such proposals.

APLA was one of the first bodies of lawyers to condemn the enactment of the *Health and Other Services (Compensation) Act 1955*. Within a week of the commencement of the legislation in February this year, APLA had made detailed submissions to the Federal Minister for Health and the Federal Attorney General protesting about the impact the legislation would have upon plaintiffs. More recently, APLA was the first association of lawyers publicly to criticise suggestions that the Australian Taxation Office might seek to tax interest on past personal injury damages verdicts.

APLA was inspired by similar associations overseas, namely the Association of Personal Injury Lawyers (APIL) in the United Kingdom and the Association of Trial Lawyers of America (ATLA) in the United States. The latter association was conceived by a meeting of 11 workers' compensation lawyers who acted primarily for claimants in Portland, Oregon in 1946. In August this year it celebrated its 50th Anniversary. It now has over 55,000 members and is regarded as the second most powerful lobby group in Washington, after the National Rifle Association. However, unlike the NRA, it has never been defeated in its lobbying efforts. It has recently successfully sidelined the "tort reform" legislation put forward by the Republican Party in Congress which would have seen caps on verdicts and the elimination of punitive damages and other entitlements of plaintiffs in the United States similar to restrictions we have seen in this country in recent years.

The President of the Association of Trial Lawyers of America, Mr Howard Twiggs, delivered the Civil Justice Address at APLA's inaugural national conference in Noosa Heads in October 1996. The conference was extraordinarily successful and attracted more than 200 delegates from around the country. The quality of the papers delivered by experts in various fields from here and overseas was extremely high. The enthusiasm of those who attended the conference demonstrated how great is the need in this country for an organisation such as APLA which caters for the needs of plaintiff lawyers both in individual cases and in the bigger political picture.

In addition to the annual conference, each State branch of APLA hosts regular seminars. The New South Wales branch, in conjunction with the United States Information Service, has held a number of breakfast seminars involving prominent American speakers on issues of relevance to lawyers who act for accident victims in both countries. More recent seminars in New South Wales have covered issues such as medical records ("What plaintiff lawyers overlook"), advocacy, Medicare and Social Security deductions from damages verdicts, and the preparation and presentation of a

complex economic loss claim for a plaintiff. APLA also publishes a bi-monthly newsletter, the *APLA Update*. This contains state-of-the-art information of practical relevance to those who act for plaintiffs.

Members can also access an expert database containing the names of over 300 experts in various fields who have been personally recommended by other APLA members. Membership enquiries may be directed to APLA's Executive Officer, John Peacock, at (02) 9415 4233. □

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## Light Work - if you can get it!

Mr X is 5 feet 3 inches tall. He was employed in a factory where, as part of his duties, he was required, about 100 times per day, to lift 50 litre cylinders weighing 17.5 kgs and place them on a hook which was 7 feet 6 inches above the floor. In doing this on one occasion he missed the hook and, in attempting to save the cylinder from falling, suffered an injury to his neck.

The employer engaged a qualified engineer to give expert evidence as to the work system. The engineer thought that the system of work provided by the employer was safe. His report included the following:-

"The task as assessed by the writer is well within the physical and lifting capabilities of even the short in stature Plaintiff. The Plaintiff simply needed to hold one hand on the bar attachment to the cylinder and stretch up keeping the relatively light (17 kilograms) load close into the body and using kinetic energy, simply extend the toes, take a very small 20cm jump and land safely on the ground.

Therefore the Plaintiff only had to lift a further 20cm and this could be achieved easily by a slight jump action (as in basketball or Australian Rules football). In fact, by standing on his toes (as in ballet dancing) without jumping would have added almost sufficient height." □

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## Change for What Sake?

"Committals may be slow, cumbersome and costly. So are the proceedings of Parliament. That is scarcely an adequate reason for their abolition."

Ian Barker QC "In Defence of Committal Proceedings", a paper delivered at the Sixth International Criminal Law Congress, October 1996. □