APLA in action

Peter Semmler QC, APLA National President

The following are excerpts from the President's opening address to the second APLA National Conference, delivered on 31 October 1997 at Coolum

Being a plaintiff lawyer in Australia at the end of the twentieth century is not easy. We are being forced to fight for our clients on several fronts. Not only must we fight an often unequal battle against better resourced opponents in individual cases in court, we must also now fight in the media, and in the state and federal legislatures, for the very survival of the system which holds wrongdoers accountable and allows accident victims to receive proper compensation.

A well financed propaganda machine, fed by insurance companies, multi-national corporations, bureaucrats, bean-counters and lawyer-hating journalists engenders public scepticism and even contempt for injured people and their lawyers. It seeks to dismantle, piece by precious piece, the framework for compensating people for injuries. Hiding behind the banner of "tort reform" is a savage, selfish, greedy attack on the essential values of an 800 year old common law tradition. A tradition which is based on well established principles of fairness; on the premise that if there is a wrong there should be a remedy, if there is injury caused by fault, there should be compensation. Again and again 'tort reformers' in this country seek to limit the legal rights of all Australians, to shelter wrongdoers from responsibility for their harmful actions and close courthouse doors to protect the profits of large insurance companies. Tort reform is nothing but a self serving pretence to make the rich richer and the poor poorer, to remove the rights and hopes of the most vulnerable segment of our community, injured and disabled people. Tort reform rhetoric allows Orwell's vision to triumph; the perpetrators will become the victims, the victims the perpetrators.

Examples of the bigger-picture problems faced by lawyers who act for the victims of negligence are frequently found in newspapers all over the country. Not content with using the Thredbo tragedy as a vehicle for attacking us in August, a month later columnist Padriac McGuinness used the death of Princess Diana as another occasion for heaping calumny on the lawyers who act for the injured. In his column in the Sydney Morning Herald of September 6th, 1997, Mr McGuinness referred to the truism that being killed in a car accident is a common hazard these days. He then went on to suggest that plaintiff lawyers in particular assiduously foster a belief that there is always someone to blame, always someone who can be made to pay for any tragedy or loss. He expanded on this theme, in the context of the death of the Princess of Wales, by referring to the passing French doctor who rendered assistance. He said that if you stop to help and something goes wrong in Australia you could well find yourself at the end of a huge law suit for compensation and damages. This is part of what McGuinness said:

> *The costs of professional negligence insurance are rising with every new absurd court judgment based on the presumption that medicos are or should be infallible and that no allowance for ordinary human error can be made, or that there is no such thing as genuine accident or unforeseeable circumstances. .....This situation has become so bad in obstetrics and gynaecology that many practitioners are simply vacating the specialism (sic). ..... It is now getting to the stage that we need laws to protect the medical profession, and anyone else coming to the assistance of a person in distress, from the legal profession.*

Unfortunately, governments are listening to this kind of message. For instance, the New South Wales Government, urged on by medical ▶

defence organisations who say that *"the current unmitigated trend in litigation in this country will inevitably lead to a crisis worse than that experienced in the United States of America"*, has set up a medical liability forum to consider restrictions on the rights of people injured by medical negligence.

The Federal Government's Professional Indemnity Review spent four and a half years examining the evidence touching on the need for changes to the tort system as it applies in the health care context. The study concluded that there was no crisis in the number of claims against doctors: rather there was a crisis in the incidence of medical negligence in this country.

In addition to the Federal Government's inquiry, the Victorian Government began its own inquiry into the legal liability of health service providers in September 1995. That inquiry produced a 264 page report on 21st May this year. Its conclusions reinforced those of the Professional Indemnity Review. It found that the perception of the medical profession concerning recent increases in the costs of professional indemnity insurance is not reflected in a significant increase in either the quantity of claims or their quantum. It found that there was no real crisis in the level of insurance premiums which was impacting on service delivery or was likely to impact in the near future. On the evidence before the committee there was no public benefit in making changes to the common law. The inquiry could find no better formulation to balance the interests of doctors and patients than the current tort system.

In the Northern Territory, not content with eliminating the common law rights of Territorians to sue for injuries sustained in work or motor vehicle accidents, the legislature is now seeking to eliminate the rights of injured workers seeking modest no fault benefits to be represented by lawyers, under changes proposed to the Work Health Act.

It is imperative that we engage in the public debate with the same degree of enthusiasm and sophistication as our opponents have historically done and will continue to do.

As part of an initiative which APLA is taking to refute the suggestion perpetrated by journalists such as Mr McGuinness, that lawyers who act for accident victims are "vultures, scavengers and night-walkers" who do things like *"picking over the tragedy of the Thredbo landslide"*, the National Council of APLA has prepared a code of conduct which lays down a protocol for the professional conduct of our members which will effectively immunise lawyers in our association from criticism of the kind to which I have referred.

Another step APLA is taking in the public arena to entrench common law rights is to field APLA nominees to the Constitutional Convention in five states. The title of our platform is *"Bill of Rights for Australia"*. If we can achieve a bill of substantive rights in this country we will be able to enshrine access to justice, including common law compensation rights, as a fundamental entitlement of every Australian. At the very least our foray into the constitutional debate is likely to increase the public's awareness of the importance of the right to sue, and the harm which is done by those who seek to legislate such rights out of existence.

I believe that the rapid growth of our association reflects an awareness amongst the lawyers who act for accident victims in this country that the very system within which we work is in danger of extinction. There is no point in attending personal injury law conferences; there is no point in becoming experts in our area; there is no point in honing our skills to win individual cases, if the precious rights to bring such cases in the future are destroyed forever by the proponents of tort reform. ■

Letter to the Editor

Sir,

The Civil Justice Award that was given to Peter Long at the APLA Conference was much more deserved than many people recognise. I have been working with Peter for some thirteen years during which time I have been involved with literally hundreds of personal injury matters with him.

Almost no-one is aware of the enormous sacrifices both of a personal and professional nature that Peter has made to pursue the Helix case. When he spoke at the conference of sleeping in John Rowe's basement (John being the barrister involved for the plaintiffs) because he could not afford to stay in a hotel, he was telling the literal truth.

What he did not mention is that he has been at work at 3.00am every morning since 1994.

What he also did not mention is that he and one other solicitor, Patricia Howland, albeit with a hoard of paralegals, were very successfully managing some 1200 personal injuries files throughout the Helix case. This is an extraordinary effort particularly as Peter has funded all of these files from his own resources.

Yours faithfully
Dr Ian R Coyle
Consulting Ergonomist/Psychologist

If you would like to express your opinion on APLA matters, please write to the Editor, Plaintiff, GPO Box 2658 Sydney NSW 2001.