

# Costs and the Public Trustee: significant ramifications

Anne-Maree Tsoa-Lee, Sydney

*The ramifications of acting on behalf of minors are significant particularly in relation to obtaining payment of your own costs. I had the pleasure of acting for a delightful boy who was severely injured. He had been involved in 2 accidents:*

1. DOA 23.3.91 Plaintiff ran across a road on a bridge, was hit by a motor vehicle and trapped thereunder causing severe burn injuries to his leg and significant scarring. The Plaintiff was advised by former solicitors that he did not have a claim. He subsequently came to see me when he was involved in a more severe accident and a section 52(4) application was made. This was successful. Liability was clearly in dispute. The matter was settled for a significant sum after extensive negotiations on 17 May 1996.
2. DOA: 30.12.93 The Plaintiff amputated his right dominant arm in a motor vehicle accident as a passenger in a shooting buggy. He suffered various other significant injuries. The matter was settled for a significant sum after extensive negotiations on 12 July 1996 after the Arbitration of the matter before the Supreme Court of New South Wales.

Due to the financial resources of the Plaintiff's family our firm was required to attend to payment of all disbursements which were significant.

The Approval was listed before Master Malpass in the Supreme Court of New South Wales on 18 December 1996. At that time the Plaintiff tendered detailed affidavits as to the additional costs requested to be paid out of the monies prior to investment with the Public Trustee on a solicitor client basis. Master Malpass felt it was a matter to be determined by the Public Trustee and an Order to that effect was made.

Despite the Orders the Public Trustee

initially felt he did not have the power to make the determination. No determination was made for some 19 months despite various telephone calls, correspondence and lengthy discussions. Finally the Public Trustee has considered the matter and agreed to the fees claimed. There was no allowance for interest made and if both Junior and Senior Counsel had pressed the interest component of their costs agreement with our firm the firm would have been faced with two very significant disbursements claims for which no fees could be recovered from with either the next friend or the Public Trustee. ■

Anne-Maree Tsoa-Lee is a Senior Associate at Keddiess.  
Phone (02) 9264 9722, fax (02) 9264 9443

## APLA Expert Database

Everyday APLA receives requests from members for referral to one of the expert witnesses on our database.

This service is exclusive to APLA members and is greatly appreciated by solicitors and barristers seeking assistance in their cases.

Have you recently used an expert in any field for one of your cases? You can help us expand our list by completing an *Expert Database Recommendation Form*.

The bigger and better our Expert Database is, the more useful it can be for all APLA members.

For more information or to request a Recommendation Form, please contact the National Office on (02) 9415 4233

## \$237,000 award for mower accident

**It's the case of the lawnmower, the python and nearly a quarter of a million dollars.**

**A man who had a run-in with his ride-on mower was awarded almost \$237,000 damages in the Supreme Court yesterday.**

**Mr Henry De Mar had sued the manufacturers of the mower after he was forced to leap off the bucking machine that was speeding out of control.**

**Justice James Wood said Mr De Mar had been mowing the grass on his North Coast retirement property in 1994 when the machine accelerated down a slope.**

**After trying unsuccessfully to stop the machine, Mr De Mar leapt off "fearing it might roll on top of him", the judge said.**

**"As he hit the ground, he rolled like a ball down the hill and over a lower embankment."**

**Mr De Mar, who was 58 at the time of the accident, suffered severe facial injuries, fractured ribs, and a punctured lung as a result of his fall. Eventually, he hopped back to his house.**

**Then he fell to the ground where, after an "alarming encounter with a python", he was eventually found by his wife, the judge said.**

**Mr De Mar was in hospital for six weeks initially and has since had several operations for his injuries.**

**He sued the manufacturer of the mower, CMMC Pty Ltd, and was yesterday awarded \$236,645.**

□ AMANDA PHELAN

SMH 22/7 1998.

Reproduced with permission.