

December 2004

# Health News

Legal Issues update for the Health Profession

## Planning for a Canberra Catastrophe?

by Richard Faulks Seminar coming : 22nd FEBRUARY 2005

**Stacks with Snedden Hall & Gallop plan to examine the changes to ACT legal procedures relating to Catastrophic Injury matters in a seminar on 22nd February 2005.**

**There is no question that Catastrophic Injuries cases are inherently complicated in responding to treatment management, and the long term needs of the patient.**

Compensation for those injured as a result of motor vehicle accidents, work accidents, or in other situations where a duty of care is owed, is becoming more and more complex. Different jurisdictions have enacted laws amending the traditional common law rights of such accident victims. It is essential that those injured have access to up to date and comprehensive advice about entitlements in order to assist in the rehabilitation process.

For those who suffer catastrophic injuries as a result of such accidents, early intervention and funding for rehabilitation is essential. In the ACT there are now new procedures under the *Civil Law (Wrongs) Act 2002* which dictate the form in which notice of a claim must be given, and the process to be adopted in seeking early resolutions to issues like liability and the implementation of rehabilitation strategies. There are time limits associated with the giving of appropriate notice and requiring insurers or other respondents to deal with the claim in a timely fashion.

The issues for those suffering catastrophic injuries are complex. Frequently, there is a need to access expert evidence relating to care needs, equipment and treatment requirements. Funding in relation to these areas can be crucial.

In a further complication, the ACT has introduced special rules dealing with expert evidence which limits the evidence which can be called in any court proceedings relating to particular medical issues. More than ever this means that careful preparation of claims for those injured is essential.

This seminar will involve a detailed examination of the type of compensation available to those catastrophically injured. Tom Goudkamp has handled many claims for those suffering serious brain injury and other catastrophic injuries and he will outline the principles governing the assessment of compensation for those injured. In addition to that, the seminar will outline the particular ACT procedures which will apply to any claims for compensation and Richard Faulks will provide a summary of the latest developments under the *Civil Law (Wrongs) Act 2002* including those provisions dealing with the appointment of single expert witnesses.

**For further information, please contact Richard Faulks from Stacks with Snedden Hall & Gallop on 62018900 or e-mail him at [rfaulks@stackshg.com.au](mailto:rfaulks@stackshg.com.au).**

Volume 1, Issue 1



**Richard Faulks**  
Managing Partner

*It is essential that those injured have access to up to date and comprehensive advice about entitlements in order to assist in the rehabilitation process.*

### In this issue:

Doctor's Dinner	2
Workers Compensation News	2
Accidents Overseas	2

## Doctors' Dinner

The 6<sup>th</sup> annual health professionals dinner was held on 19 August 2004 at the Lobby Restaurant. Thank you to all who came and supported the evening.

There was a wide cross section of guests from all parts of the health profession and those of us at Stacks with Snedden Hall & Gallop thoroughly enjoyed catching up with all of you.

We endeavoured to provide a mixture of legal information, comment about the Australian National University Medical School, and some interesting material about the characteristics

of each generation. I hope it was of benefit to those who came.

We always find it most enjoyable to mix with those in the health profession, not only because of our shared interest in our clients/patients, but also because of the common business issues which confront us all.

We look forward to catching up with you all again at the 7<sup>th</sup> annual dinner in 2005. *Pictured below: Tal Williams, Phil & Pam Lowen, Dr Eddie & Maureen Cassar at the 2005 Dinner.*

## Good Samaritan Deserves Workers' Compensation

By Bill Andrews

If a worker travelling from his place of employment to home is injured in an accident, he is covered by workers' compensation for time off work and treatment.

What happens if he witnesses a bag snatcher assaulting a woman on the way and runs him down? In a recent case, the worker chased and eventually apprehended the thief, wrestling him to the ground and in the melee, which followed, injured his ankle. The workers' compensation insurer however, denied liability saying that the direct journey home was broken by this independent venture.

Fortunately common sense prevailed and the Workers' Compensation Commission accepted that the worker who had not acted voluntarily had a limited choice of how he could respond once he heard the victim's cry for help. The journey was not broken, and community expectations would insist that he still be covered by workers' compensation.

Good Samaritans are therefore covered to a large extent by workers' compensation.

It is also interesting to see that the new S.5 of the Civil Law (Wrongs) Act 2002 provides Good Samaritans with indemnity against being sued for compensation even where their actions may be regarded as reckless and cause further harm. **Good Samaritans are now in a far stronger legal position.** Bill can be contacted on (02) 62018987.



# W

## Watch Out for Accidents Overseas!

The Full Court of the Supreme Court of Western Australia recently had to decide what law applied when an Australian tourist in China who suffered injuries in negligent circumstances, tried to sue her employer in Australia.

At the first hearing, the trial judge applied the Australian choice of law rules to determine that the law of the place of the wrong (China) should apply. He then applied a Chinese choice of law rule which permitted the Court to apply at its discretion the law of the party's place of nationality. He then applied Australian law and found that the plaintiff could recover damages. However, if he had applied Chinese law, the claim would have failed because it was time barred, that is, she had sued outside their statutory limitation period.

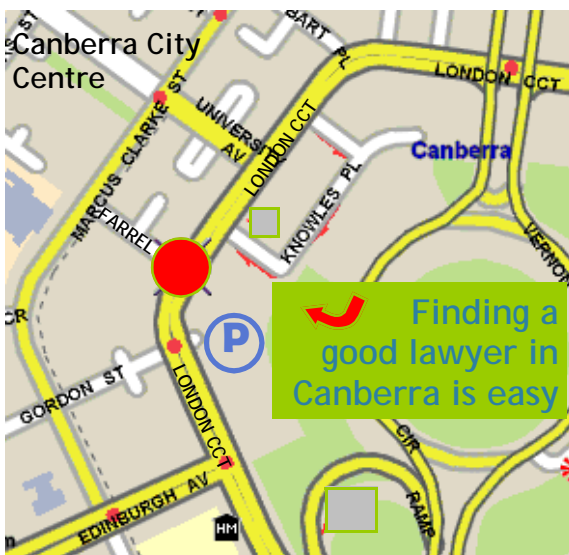
The Court of Appeal then reviewed the technicalities in applying two systems of law. In the end, they took the more certain course of applying the recent decisions of the High Court which followed policies of certainty and predictability (*Régie National Des Usines Renault SA v Zhang* [202] 210 CLR 491).

These cases require the application of the substantive law in the place where the negligence occurred without reference to any aspects of the law of the place where the hearing was being conducted. Accordingly, the Court should have applied the law of China.

It was clearly statute barred under Chinese law and so the claim failed.

*The lesson is to see your lawyer sooner rather than later to ascertain what your rights might be following an accident.*

Bill Andrews can be contacted on (02) 62018987.



Stacks with Snedden Hall & Gallop are conveniently located on Level 4, 11 London Circuit, Canberra.