

Health News

Legal Issues update for Personal Injury Clients

Being drunk isn't an excuse!

The High Court, in the recent case of *Joslyn v Berryman*, has held that it is no excuse for an intoxicated passenger to accept a lift from an intoxicated driver. This decision overrules previous court decisions where it had been held that a passenger is only guilty of contributory negligence in accepting a lift from an intoxicated driver if the passenger knew that the driver was intoxicated. This resulted in cases where a passenger who was too intoxicated to know that the driver was also intoxicated was able to claim full damages, without any reduction for his or her own contributory negligence.

Justice McHugh, of the High Court, said that the test is "whether an ordinary reasonable person – a sober person – would have foreseen that accepting a lift from the intoxicated driver was exposing him or her to a risk of injury by reason of the driver's intoxication." Justice McHugh went on to say that, "If a reasonable person would know that he or she was exposed to a risk of injury in accepting a lift from an intoxicated driver, an intoxicated passenger who is sober enough to enter the car voluntarily is guilty of contributory negligence."

This decision means that a finding of contributory negligence will be inevitable, regardless of whether the intoxicated passenger was in a state to actually know that the driver was also intoxicated. It is not what the passenger actually knows, in accepting a lift with an intoxicated driver, but what a reasonable person could have known by observation, inquiry, or otherwise.

It is irrelevant that the passenger's intoxicated condition prevents him or her from perceiving the risks of accepting a lift from an intoxicated driver. The High Court has confirmed that contributory negligence is independent of 'the idiosyncrasies of the particular person whose conduct is in question'.

Tanya Herbertson



If you have been injured in an accident, you may be eligible for compensation. For answers to all your questions call Richard, Bill or Tanya 1800 23 1800.

Here are some stories which may be of interest to you...

This Job is So Stressful—Help!

The fact that an employee may be placed under pressure to undertake an excessive workload, will not necessarily result in any breach of duty of care on the part of the employer, should the employee suffer from a stress like psychiatric condition.

In a recent High Court decision, the Court had to consider circumstances where an employee was given what appeared to be an excessive workload and complained that not all duties could be performed within the allocated time.

The Court held that it was not enough that the employer was aware of the excessive workload. It must also be foreseeable that requiring the worker to perform the tasks would be likely to lead to an injury in the form of psychiatric illness. The employer was never alerted to the fact that the worker's health was in jeopardy. The Court held that her complaints about the workload were not enough to alert a reasonable employer to the possibility of the development of a psychiatric injury.

I suggest that, in such cases, if the worker produces some form of medical certificate or other information to an employer highlighting the possibility of psychiatric injury, it will then be clearly foreseeable to the employer that they must take steps to try and deal with any apparent stressful workload. In the absence of such evidence, or other complaints of illness from the worker or others, a breach of duty of care is unlikely to be found.

Richard Faulks.

Freecall 1800 23 1800

4th Floor
11 London Circuit
Canberra ACT 2601

reception@stackshg.com.au

Staff News



Tanya Herbertson

The Partners and Staff of Stacks with Snedden Hall & Gallop would like to announce the appointment of **Tanya Herbertson** as Associate. Tanya's background with NRMA has proved invaluable to clients particularly those in motor vehicle accidents.

We would also like to announce the promotion of **Geralyn Hutchison** to PA to both the Managing Partner, Richard Faulks and to Tanya Herbertson. Geralyn came to us from the Australian Lawyers Alliance and her professionalism and understanding nature is proving a real asset in handling clients inquiries.

Congratulations both Tanya and Geralyn on your promotions.

Changes to Workers Comp Rights

You may have read of an application by Optus and Toll to leave the state workers' compensation schemes and join the federal compensation scheme known commonly as Comcare.

The Victorian Workcover Authority had challenged the decision to allow Optus a licence to join the Comcare Scheme on the basis that it would opt out of the various state schemes. The Federal Court has dismissed the application to prevent that happening. An appeal is being considered.

An obvious immediate effect of a decision like this, is the likely trend of other national organisations to seek similar licences to join the scheme. The states and territories will be concerned as the departure of such employers from the state and territory workers' compensation schemes will seriously undermine their viability. Of more importance, is the fact that as a result of an action by their employer, the various workers employed by such organisations will have their workers' compensation and common law rights affected. In those states and territories where common law rights remain unfettered, employees will simply lose their right to sue for damages by virtue of the *Safety, Rehabilitation and Compensation Act 1988*, thereby putting them in a disadvantageous position from those other private sector employees. It seems wrong that the action of an employer can effectively bring about the removal of an important right where previously the state or territory legislature had resolved not to take that right away.

Richard Faulks



This cartoon is appeared in "Insanity Streak" by Tony Lopes

This newsletter is produced for clients of Stacks with Snedden Hall & Gallop. For clarification of any of the legal issues raised in this document please don't hesitate to call (02) 6201 8900 or email your query to reception@stackshq.com.au.