

Challenges for the *new century*

The dawn of the new millennium provides an opportunity for plaintiff lawyers to reflect on both achievements of the past and the challenges of the future.

APLA members are united by a common purpose. We share a commitment, and a passion, to serve the interests of our clients. This is perhaps in itself not unique. All lawyers may make that claim.

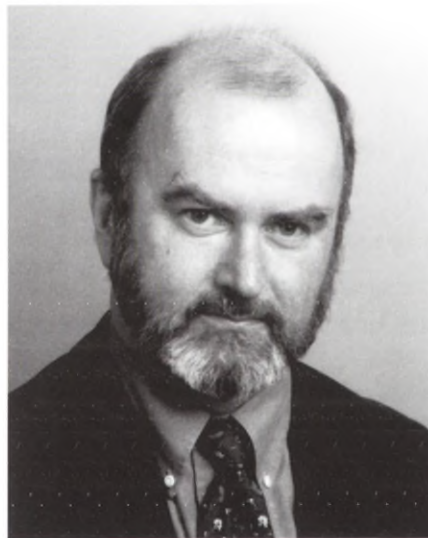
Plaintiff lawyers are, however, unique in that they share a commitment to assisting those who have lost their bodily integrity, their psychological well being, their capacity to work and their quality of life. All too often, we represent the loved ones of those who have lost their lives.

We share a commitment to making those responsible accountable for what they have done.

Plaintiff lawyers share a commitment to redressing the imbalance of power and the inequality in legal and financial resources available to defendant corporations and their anonymous insurers.

We share a commitment to challenging a cruel cost benefit calculus that often puts the profit and pecuniary interest of amorphous corporations ahead of the health and welfare of human beings.

Plaintiff lawyers are the thin line between the rights of individuals and the abuse of corporate and government power.



As plaintiff lawyers, we can all be rightly proud of our achievements.

As an organisation, APLA can be proud of its achievements. Membership of APLA has grown to over 1,500 members in a short space of time. There are strong organisations in each state and territory. Excellent professional staff are now employed full time at both federal and state level. We have highly effective professionals involved full time in lobbying and policy work at the state and federal level. APLA has had an increasing influence on policy and election results. There are strong educational programs at both state and federal level. APLA and many of its members have developed close international links with professional colleagues

in North America, including ATLA and the Canadian Trial Lawyers Associations, and also in Europe, especially with APIL. Our publications are informative and widely read. Financial sponsorship for the annual APLA conference has doubled and doubled again in the last 2 years. The organisation is solvent and participation in last year's annual conference was greater than in any previous year.

Victorian APLA members played a major role in achieving a commitment by the incoming Labor Government to restore common law rights for seriously injured workers. In other states, APLA has also had significant successes in seeking to restore the rights of injured persons and in preventing the further erosion of rights.

The services provided by APLA to its members are expanding. APLA is in the process of providing an increasing array of information and communication services through computerised technology. We are also assisting in the development of costs indemnity insurance for our clients.

Notwithstanding our collective achievements, there is still much to be done.

Those who hold political office and purport to safeguard the public interest appear to be increasingly dependent upon income generated from sources such as the tobacco industry, gambling and the privatisation of essential public services.

Members of the Australian community are expected to pay increasing costs for the privilege of driving on the roads, drinking water, turning on the light and speaking on the telephone. We are told that we can afford to pay a 10% goods and services tax on all commodities and transactions, yet our clients and the public are being duped into believing that as a society we cannot afford to provide adequate compensation for serious injuries inflicted by corporate and other tortfeasors.

Notwithstanding the failure to provide adequate safety and crash worthiness requirements for motor vehicles, and the failure to provide safer road and public transport services, those who suffer serious personal injury are left all too often without adequate remedy or redress.

Corporate influence on our governmental, policy making and administrative processes is widespread, often subtle, covert, and aided and abetted by many of our professional legal colleagues.

Courts are clogged with commercial litigation and turf wars over an increasing array of economic rights and intellectual property disputes.

The media is increasingly deployed for the promotion of commercial interest, rather than as a vehicle for independent objective investigation and reporting.

Legal aid is not available to assist our clients, notwithstanding the legal merit of their claims and their compelling predicament, because we are told that the public purse cannot afford it. Perversely, defendants and their insurers have a seemingly unlimited amount of publicly subsidised legal resources as a result of the tax deductibility of legal fees and expenses, regardless of the legal merit of the defence of legitimate claims and despite losing on the merits either at trial or on appeal or both.

There is increasing evidence in the United States that those who would wish to curtail and abolish the rights of injured persons and consumers are using an increasingly sophisticated range of techniques and professional intermediaries with a view to deliberate-

ly seeking to influence political decision making, public opinion, the teaching of academics, the attitude of judges and the role of jurors. There are signs that this is also occurring in Australia.

The professional standards of the legal profession have been seriously eroded by a slavish adherence to the commercial interests of clients, all too often without sufficient regard to the legal merits of their client's case. Small armies of lawyers are routinely deployed in sophisticated forensic attempts to orchestrate obstruction, delay and cost escalation with a view to defeating claims other than on the merits. An increasing array of so-called experts are available to those who are able to buy their opinions, and whose opinions are able to be bought.

Tobacco companies and foreign-based corporations are currently seeking to invalidate, on constitutional grounds, Commonwealth legislation conferring class action rights on injured persons and aggrieved consumers.

Medical defence organisations continue with a highly orchestrated campaign designed to limit compensation for victims of medical negligence.

There is much to be done. As we enter the new millennium, it is timely to reflect upon our successes and learn from our losses.

To serve the interests of our clients requires passion.

In seeking to preserve common law rights and in the pursuit of justice, we are not mere legal technicians. Being a plaintiff lawyer often requires creativity and commitment.

Our opponents have unquestioned legal skill. Our opponents usually have greater resources at their disposal in any legal fight. Fortunately for our clients, the size of the fight in the dog is often a greater advantage than the size of the dog in the fight.

The recent successes against the tobacco industry in the United States provide recent proof of this proposition. The tobacco industry has virtually unlimited money and legions of lawyers constantly deployed in aiding and abetting its iniquitous conduct. In the United State alone, the tobacco industry is responsible for over

300,000 deaths per year.

However, it is plaintiff lawyers who have been at the forefront of the legal challenges against the tobacco industry, both in the United States and in Australia.

It is plaintiff lawyers who have exposed the extraordinarily egregious misbehaviour of this industry for many decades in systematic misrepresentation of the truth and active concealment of evidence concerning the medical link between smoking and ill health.

Plaintiff lawyers have recently obtained substantial success in the United States, not only in obtaining substantial compensation for health care costs borne in treating people with tobacco related illnesses, but in obtaining policy commitments by the tobacco industry not to promote its products to children and not to covertly promote its products through the motion picture industry. In recently reflecting upon his battle with the tobacco industry in the United States, a great American trial lawyer, Mike Ciresi, concluded a recent speech by quoting the following words from an unknown author:

"A Trial Lawyer's Legacy".

It is my right to be uncommon, if I can.

I do not wish to navigate calm seas, humbled by the sameness of the task.

I want to take the calculated risk, to dream, and to build, to fail, and to succeed.

I refuse to barter incentive for certainty.

I prefer the challenge of the new and unique to the guaranteed existence, the thrill of fulfillment to the stale claim of utopia.

I will not ever trade freedom for beneficence, nor my dignity for a stipend.

I will never cower before any master, nor bend to any threat.

It is my heritage and my duty to stand erect, proud, and unafraid, to think for myself, to enable my clients to enjoy the benefits of my advice, and to face the world boldly and say, "This I have done". ■

