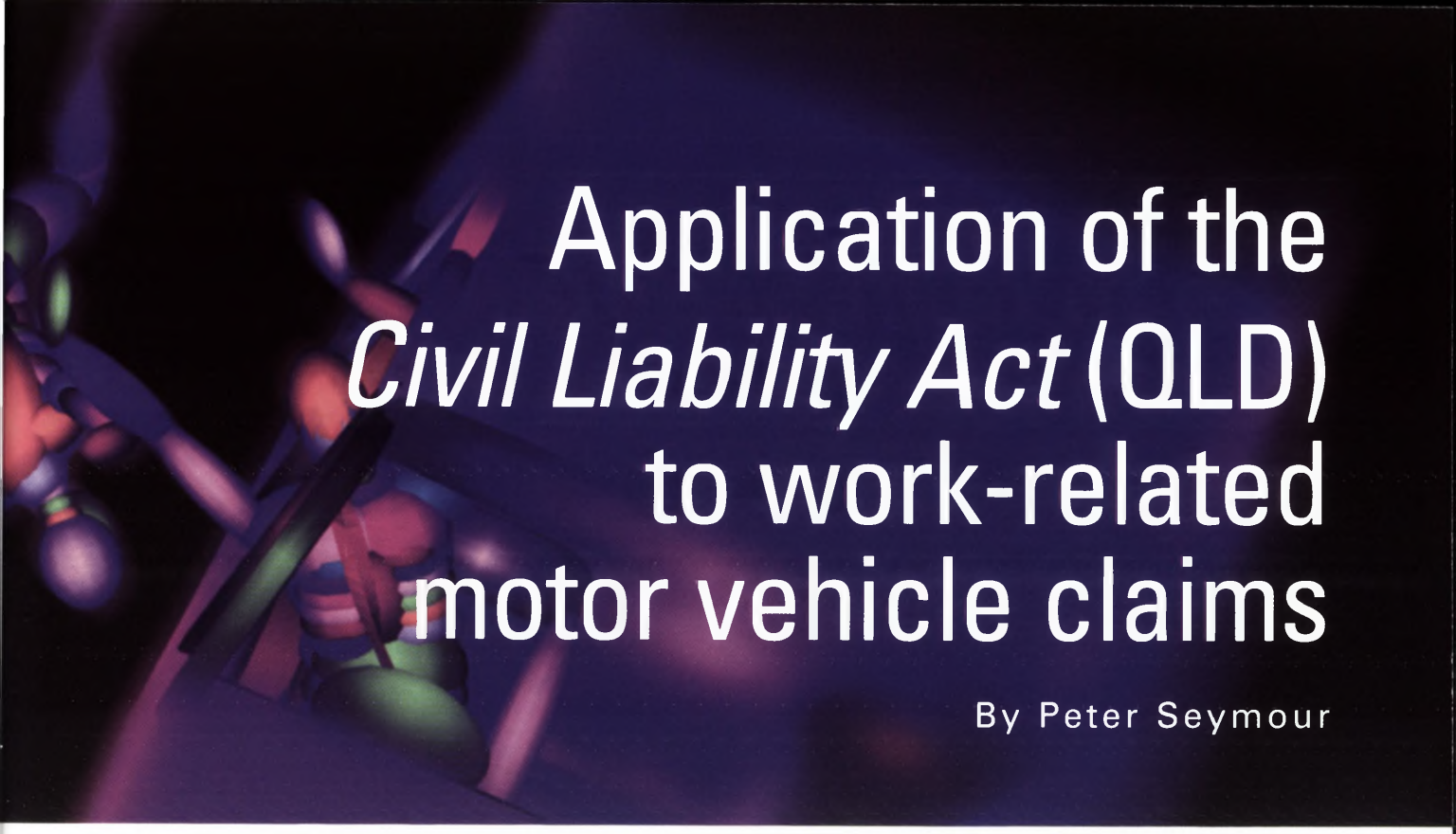

Application of the *Civil Liability Act* (QLD) to work-related motor vehicle claims

By Peter Seymour

On 3 March 2006 the Queensland Court of Appeal delivered its judgment in the matter of *Newberry v Suncorp Metway Insurance Ltd.*[1] The Court overturned the earlier decision given by the trial Judge in finding that the provisions of the *Civil Liability Act* (CLA) apply to Mr Newberry's claim for damages.

THE FACTS

Mr Newberry worked for Dodds Agencies, a firm that delivered small goods from Bowen to Airlie Beach and Proserpine. On 8 October 2004 he suffered personal injuries while travelling in the course of his employment in a truck driven by his brother.

The accident occurred when another vehicle, which was travelling on the wrong side of the road, collided with the vehicle in which Mr Newberry was travelling. Mr Newberry then delivered a notice of claim to Suncorp, the CTP insurers of the vehicle at fault. No claim was made by Mr Newberry against his employer.

THE DECISION AT FIRST INSTANCE

The Court accepted an argument advanced on behalf of Mr Newberry that his claim be exempted from the provisions of the CLA, under the terms of s5(b).

Section 5(b) provides:

'This Act does not apply in relation to any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes … an injury as defined under the *Workers Compensation and Rehabilitation Act* 2003 [WCRA], other than an injury to which Section 34(1)(c) or 35 of that Act applies.'

It was accepted that neither s34(1)(c) or s35 of the WCRA had any relevance to Mr Newberry's claims. These sections deal with an injured worker who is injured while temporarily absent from the place of employment during an ordinary recess,[2] or injury sustained by a worker in a journey claim – that is, travel between the worker's home and place of employment, or travel between two different places of employment.[3]

His Honour took the view that he should adopt a literal approach to the construction of s5(b). He regarded the plain meaning of the section as excluding from the operation of CLA every case where the injury meets the definition in the WCRA, other than the two specified exemptions.

It was held that Mr Newberry's injury was an injury as defined under s32 of the WCRA. In reaching that conclusion, his Honour held that Mr Newberry's employment was a significant contributing factor to the occurrence of his injury.

THE COURT OF APPEAL

In a unanimous decision, the Court of Appeal overturned the judge's findings and found that the CLA does apply to Mr Newberry's claim.

The main judgment was written by Justice Keane, with whom both Justices de Jersey and Muir agreed. >>

His Honour noted that s5(b) is concerned with the claim made by the claimant, not with the facts as they may or may not ultimately be established at trial.

His Honour formed the view that it was necessary to understand s5(b) as follows:

> "This Act does not apply in relation to any civil claim for damages for personal injury if the claim is that the harm resulting from the breach of duty owed to the claimant is or includes a personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury caused by the breach of duty owed to the claimant by the person against whom the claim is made."

He noted that:

> "whether the contribution of the employment activities was, or was not significant, involves the consideration of issues of causation and causal potency in the relationship between the breach of duty and the employment activities."

His Honour was of the view that this was the appropriate test rather than determining whether an injury falls within the meaning of injury as defined by s32 of the WCRA.

In the present case, his Honour noted that the breach of duty alleged by Mr Newberry was not such as to involve or to require any reference to the exigencies or activities of Mr Newberry's employment. The duty owed to Mr Newberry was owed to Mr Newberry as another user of the road. Mr Newberry's activities as an employee were irrelevant to that duty which was owed by the appellant's insured, the breach of that duty and the injury caused to Mr Newberry as a result of that breach.

His Honour also had reference to the Minister's second reading speech in support of the CLA. He was of the view that the construction which he adopted fully accorded with Minister's speech.

His Honour noted that the exclusion outlined in s5(b) is not limited to cases where the employer of the injured worker is a defendant; in some instances, the exclusion will cover claims against persons other than an employer.

At the same time, in order to fall within the exclusion, it must be possible to say that the claim against a person other then an employer is truly a claim in relation to a 'work injury'. The claim will be such a claim only where it is alleged that the employment was a significant contributing factor to the occurrence of the injury for which the person against whom the claim is made is alleged to be liable.

It would therefore be possible for a claim against a person other than an employer to be excluded from coverage of the CLA, and at the same time excluded from coverage of the damages provisions of the WCRA, which regulate only damages claims against employers.

His Honour therefore formed the view that:

> "the question to be answered is whether Mr Newberry's employment was material as a significant contributing factor in relation to the injury the subject of Mr Newberry's claims for damages against the appellant."

His Honour observed that the fact that an injury had been suffered arising out of employment, or in the course of employment, is not sufficient to establish that the employment had been 'a significant contributing factor to the injuries'.

He concluded that there must be a more substantial connection between the employment and the injury than is required by the phrases 'arising out of employment' or 'in the course of employment'.

His Honour concluded that s5(b) requires a determination of whether the employment of the claimant is claimed to be a significant contributing factor to the occurrence of an injury for which a third party is alleged to be liable in damages, because the third party has caused the injury by breach of duty owed to the claimant.

That raises issues of causation that must address the contribution of the claimant's employment activities to an injury which is also claimed to be caused by the fault of a person other an employer, and the significance of those activities in the context in which notions of legal fault on the part of the third party are the essence of the claim. ■

Notes: **1** [2006] QCA 48. **2** Section 34(1)(c) WCRA. **3** Section 35 WCRA.

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