ing was less than expected, thus reducing the costs recovered.

(iv) In many cases plaintiffs could not afford to have Counsel. There would simply be insufficient fees to go around.

(v) It would be uneconomical for leading expert witnesses to be engaged on behalf of plaintiffs.

(vi) The fixed costs would apply regardless of the complexity or length of the trial, or the behaviour of the defendant.

A scheme whereby costs are fixed to a result rather than to the amount of time and effort involved in preparing and presenting a case could also be open to abuse by plaintiffs' solicitors. Some could be tempted to settle cases with minimal preparation and investigation, to the detriment of their clients, so as to recover "reasonable" fees. A significant increase in professional negligence cases could ensue.

It is not entirely clear why plaintiffs' solicitors' fees are being targeted as the cause of any problem which may exist in relation to legal costs. The surveys undertaken thus far have lumped plaintiffs' solicitors' fees with defendants' investigation and surveillance costs, defendants' disbursements, including Counsels' fees and fees for medical and non-medical experts. No information is currently available to provide a breakdown of the costs.

If plaintiffs' solicitors' fees have in fact increased under the Motor Accidents Scheme a reasonable explanation would be the increased work expected of solicitors in the area. Plaintiffs' solicitors are required to provide multiple further and better particulars to insurers and their lawyers. Further, the various obligations imposed on plaintiffs and their solicitors have undoubtedly increased the frequency of Notices of Motion being filed by defendants. Attendance at the District Court Motions List can be extremely time consuming.

The behaviour of insurers should also be considered. Some insurers tend to be obstructive and unco-operative, particularly when it comes to admitting liability and/or attempting to settle claims. This inevitably results in higher costs being awarded to the successful plaintiff.

Finally, it is often overlooked that most plaintiffs' solicitors in MAA cases carry significant disbursements due to the inability of their clients to pay. It is not uncommon, particularly in catastrophic injury cases, for plaintiffs' solicitors to carry disbursements in excess of $20,000. Further, most plaintiffs' solicitors accept instructions on the basis that no fees will be payable unless the claim is successful. ■

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Mt Druitt High School "Class Action"

Matthew Richardson, Sydney

On 7 January 1998 the Daily Telegraph Mirror ran a front-page headline 'Class Action'. The following story reported the excellent result that had been achieved by the Year 12 students in the Class of 1997 at Mt Druitt High School.

The headline *'Class Action'* is also a convenient summary of the proceedings which had by then been filed, following the publication the previous year by the Daily Telegraph on its front page of the story about Mt Druitt's Year 12 Class of 1996 headed *'The Class We Failed'*. The class that the Daily Telegraph said had failed had different ideas. They engaged The National Children's and Youth Law Centre and Gilbert and Tobin Lawyers to represent them in this matter. In December of 1997 nineteen of them filed proceedings against Nationwide News, the publisher of the Daily Telegraph, seeking damages for injury to their reputation and credit. They also seek aggravated damages for the prominence and sensational treatment given to the original article as well as the reckless indifference of the newspaper in failing to check the basic facts with the plaintiffs.

The students' pleading alleges that the Telegraph's story about the performance of the Year 12 students in the 1996 class at Mt Druitt High School was defamatory of them because it identified each of them in an accompanying front-page photograph of the class and also by reference to the class. They say that the article suggested :

- that they were so stupid and lazy that they failed the Higher School Certificate;
- that they were pitiable failures unfit for any useful occupation; and
- their performances in the HSC were so bad as to make them objects of scorn, ridicule and pity.

The case was before the Court on 11 June 1998 for an application by the Defendant to strike out several aspects of the Statement of Claim. Such applications are usual in defamation proceedings. His Honour, Justice Levine, in his Judgment dated 10 July 1998 ordered that the article *"Class We Failed"* and the editorial were capable of conveying the imputation that the students "were so stupid that they failed the higher school certificate." His Honour further ordered that the editoral was capable of conveying the additional imputation that the students were "abject, overwhelming failures in that they were incapable of successfully completing their HSC."

The matter is likely to take at least two years to finally reach trial. ■

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