the word "intended" in the used sense of "suitable or apt". Characteristics or attributes of the motor cycle were those of a road going vehicle. It was fitted for use on the smooth surface of a highway shared with other vehicles. The motor cycle has not been modified to adapt it for use as a paddock bike.

Newton J in *Newton v Incorporated Nominal Defendant supra*, had regard to the evidence of its use. The excavator was always transported to and from construction sites by a low-loader and when it was in operation on the road the area in which it was operating was always closed to the public.

Buchanan J.'s opinion was that the evidence of use may throw light on or reinforce or demonstrate what a particular vehicle is suitable or meant for.

The Appellant pointed to the fact that the motor cycle was situated in a place remote from the nearest road, it was currently only used on rough ground and had last been used on a highway some 20 years before. Those circumstances may warrant the conclusion that the owner had no intention of using the motor cycle on a highway.

Buchanan, J.'s opinion was that this was not the test. The use in fact being made of the motor cycle was not dictated by the nature of the motor cycle and threw no light on the question of the use or uses for which the vehicle with its particular physical attributes was suitable for, apt or meant for. Rather this was an eccentric use of a vehicle that remained once suitable or meant for the highway.

The Appeal was dismissed.

Summary

It has this been decided that if a motor vehicle is intended to be used on a highway, that is, manufactured for that purpose then it is a motor vehicle within the meaning of the legislation and capable of taking part in a transport accident in accordance with the legislation. ■

David Chapman is a Partner at Kelly & Chapman,
phone 03 9557 2915, **fax** 03 9557 1225

WA canola farmers in class action over seeds

Cathy Bolt

A farmer in Western Australia has launched representative legal proceedings against a major seed company in a further reflection of the growing use of class actions and no-win, no-pay legal fee arrangements to resolve product disputes in Australia.

The test case — which involves alleged weed contamination in canola seed — is the latest to be run by Peter Long and Co, a law firm from Gunnedah in rural NSW which is rapidly assuming the mantle of the Slater & Gordon of the bush.

In the first major resolution of a rural class action, Mr Long in 1997 successfully sued chemical giant ICI, now Orica in Australia, on behalf of 470 cattle producers hit by a major residue scare three years earlier involving its cotton pesticide Helix.

Including that case — for which individual damages claims totalling around $120 million are still being processed — his firm now has half a dozen class actions on the go against agri-chemical companies, a machinery manufacturer and NSW's Tamworth City Council.

The applicant in the canola seed action, which Mr Long is handling jointly with a Perth law firm, Healy Pynt, is Mr Trevor Wilkins, who farmed at Kondinin at the time of the events leading to the dispute.

Mr Wilkins is claiming damages and compensation for himself and all growers who bought and seeded about 70 tonnes of Karoo canola seed in 1996 which was supplied to WA distributors by Dovuro Pty Ltd, a seed merchant based in Tamworth.

It is alleged that the product, used by around 250 farmers, also contained the seeds of three weeds — cleavers, redshank and field madder — which was evident from results of sample analyses that farmers were not aware of when they planted.

The weeds were subsequently declared prohibited by the Department of Agriculture and an eradication program introduced which included chemical applications, crop inspections, and restrictions on stock being allowed to graze the stubble after crop harvest.

To date, the program appears to have been successful, with none of the weeds yet sighted in the field.

Mr Long said the farmers were claiming both expenses and loss of income and he expected the average claim would be around $20,000. He said Dovuro was being sued both for negligence under common law and for false and misleading conduct under section 52 of the Trade Practice Act.

A New Zealand company, Cropmark New Zealand, which Dovuro contracted to grow the seed, has also been joined in the action.

But the managing director of Dovuro, Mr Bill Tapp, said parts of the seed industry would be devastated if the action was successful, with a flow-on impact for farmers, who would face reduced supplies.

Mr Tapp acknowledged that the three weeds were in the Karoo seed, but said it was imported legally, the weeds were already present in Australia and none of the three was prohibited in WA at the time.

"They have been coming into the country for years in pasture seeds," he said.

Further, not one of the weeds had been identified growing in all the canola that had been planted before or after the control program was implemented. Mr Tapp said it appeared that they did not survive in the WA grainbelt, preferring a cooler climate.

He said Dovuro had only used the New Zealand company to bulk up seed in this one instance because of the huge local demand for canola seed, reflecting the boom in the crop in Australia over the past three years. In NZ, canola could be grown in summer, allowing seed to be supplied to WA farmers 12 months earlier than it otherwise would have been available.

Mr Long said he had a good relationship with Slater & Gordon, the Melbourne-based law firm which has run a number of aggressive class actions, including that against Kraft last year on behalf of people made ill by its peanut paste; and against BHP on behalf of 30,000 indigenous people affected by its Ok Tedi mine in New Guinea.

Mr Long said he tended to refer urban-based matters to Slater and Gordon, while the Melbourne-based firm sometimes referred rural matters to him.