

ISSUES FOR PRACTITIONERS

The above cases raise important issues – if a practitioner applies for a practitioner:client assessment, and the client challenges the validity of, or a term in, the costs agreement, the assessment may be able to continue, with the assessor determining these issues. But, if the assessment continues and the client later appeals, the practitioner could be liable for both the costs of the assessment and the appeal, if the assessor's determination was later found to be flawed.

Solicitor:client costs assessments will be more expensive where an assessor declines to continue the assessment due to the caveat noted by Hodgson JA. In these circumstances, the practitioner will have no alternative but to institute even more expensive proceedings to seek a declaration about the construction and/or validity of the costs agreement, and/or orders compelling the assessor to make the determination pursuant to the findings of the Court of Appeal in *Doyle*.¹⁸ If the determination is made incorrectly, the practitioner will have to appeal under s385 of the 2004 Act.

Even in a party:party assessment, if the terms of the costs agreement are challenged by the opposing party, the claiming party may be subjected to a subsequent court appeal, as in *Wentworth*,¹⁹ on the basis that the costs assessor has determined the issue without the power to do so. ■

Notes: **1** (2000) 49 NSWLR 184 at 191. **2** [2006] NSWSC 1195 (14 November 2006) at [75]. **3** [2006] NSWCA 145 (7 June 2006) at [3]. **4** At [30]. **5** *Wentworth v Rogers* [2002] NSWSC 709 at [48]. **6** *Wentworth v Rogers; Wentworth & Russo v Rogers* [2006] NSWCA 145 (7 June 2006) at [38] and [40]. **7** At [159]. **8** [2007] NSWCA 159. **9** At [56]. **10** At [61]. **11** At [61]. **12** [2007] NSWSC 101. **13** At [19]. **14** At [27] and [28], emphasis added. **15** *Doyle v Hall Chadwick* [2007] NSWCA 159. **16** *Lyons v Wende* [2007] NSWSC 101. **17** *Doyle v Hall Chadwick* [2007] NSWCA 159 at [62]. **18** *Doyle v Hall Chadwick* [2007] NSWCA 159. **19** *Wentworth v Rogers; Wentworth & Russo v Rogers* [2006] NSWCA 145 (7 June 2006).

Peta Solomon specialises in legal costs and is a director at *Costs Partners*. **PHONE** (02) 9006 1033
EMAIL petas@costspartners.com.au

BOOK REVIEW

Sophie's Journey by Sally Collings

By Leanne Larosa

Sophie's Journey is the story of young Sophie Delezio who, through her shocking ordeal, has shown Australia the power of courage and love, and should be an inspiration to us all.

On 15 December 2003, a car crashed into the Roundhouse Childcare Centre in the Sydney suburb of Fairlight. Two-and-a-half-year-old Sophie, asleep on a mattress in the Possum Room with 12 of her classmates, was trapped beneath the burning car. She suffered third degree burns to 85% of her body and lost both legs below the knee, her right

ear and the fingers on her right hand. She underwent numerous operations during her initial six-month stay at the Children's Hospital at Westmead. The suffering she endured would have been unimaginable, particularly for a child too young to comprehend what had happened to her.

Her hard-fought battle to survive such serious injuries, the dedication, love and support of her parents and family, and Sophie's efforts to return to a normal life, touched the hearts of many. Despite her injuries, two-and-a-half-years later, Sophie was doing many of the things you would expect a five-year-old girl to be doing: attending

a local public school, playing with her many friends, and walking (on prosthetic legs).

But on 5 May 2006, the unbelievable happened. While being pushed in a stroller across a pedestrian crossing near her home, Sophie was struck by a car. As a result of this accident, Sophie suffered brain injury, punctured lungs, broken ribs and collarbone, and fractures to her spine. Once again, Sophie survived when the odds were stacked against her.

Sophie's Journey is a collection of stories by more than 80 people who played a part in Sophie's rehabilitation and survival. Contributors include

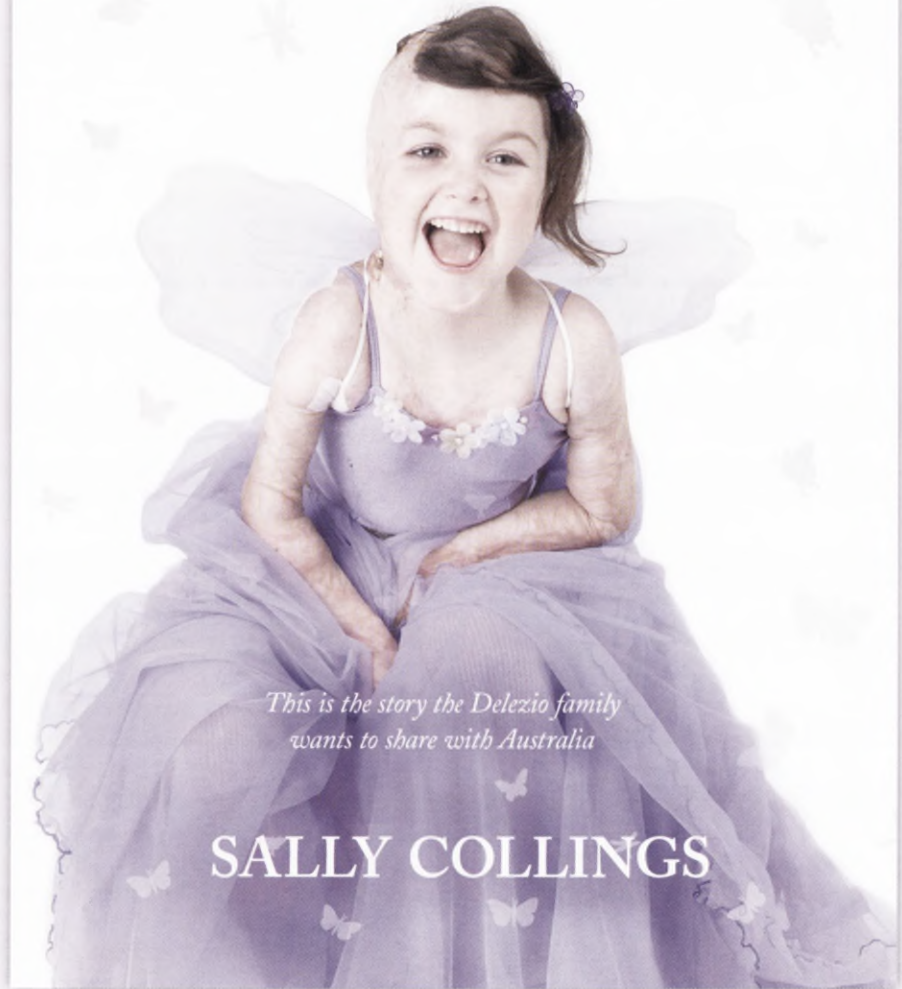
her family and friends, emergency-service workers, nurses, carers and members of her specialist medical team. Many credit Sophie's survival to the excellent medical assistance she received during the 'golden hour' and in the ICU following both accidents, and to the immense love and dedication of her parents, Ron Delezio and Carolyn Martin. According to Dr Peter Hayward, plastic surgeon at the Children's Hospital at Westmead: 'I don't think Sophie would be alive without Ron and Carolyn, I really don't.' Louise Palmer, a family friend, believes it was Sophie's strong will that saw her through. Sophie's parents dedicate the book to 'the teams that support our family and all families of children with a medical condition. We hope it gives an understanding of what happens behind the walls of a children's hospital and how lives and futures are impacted.'

Sophie is living her life today because of the many who have done and continue to do their very best for her: the paramedics who attended both accident scenes and did not waste a precious second, the hospital staff who worked as a committed team or the friends and family who shower the Delezio family with love and support.

But it is the strength of Ron, Carolyn and Sophie herself that stands out. Despite the ordeals Sophie's parents endured, they have had an unwavering spirit of optimism in everything they do for their daughter. Sophie, by all accounts a strong-willed and determined child before her injuries, has shown an enormous amount of resilience and determination to get on with her life. Lee Tonelli, a family friend observes, 'I think she is just a very well-adjusted kid, given what has happened to her. I don't think I've ever heard her complain about the difficulties involved with taking legs on, taking them off; the total acceptance is quite extraordinary. She complains if mum tries to take her away from a party, but she doesn't actually complain about anything to do with her.'

The stories told in *Sophie's Journey* are moving and poignant, and

sophie's JOURNEY



*This is the story the Delezio family
wants to share with Australia*

SALLY COLLINGS

while they remind us of Sophie's heartbreaking ordeal, they also show us how, with exceptional medical care and technology, unconditional love and support from family and friends, and Sophie's fighting spirit, miracles can happen.

A share of the proceeds from *Sophie's Journey* will go to the Day of Difference Foundation, a charity founded by Sophie's parents, to raise funds for the

prevention and control of burns-related disease. ■

Leanne Larosa is an Associate at Finlaysons. She also serves on the editorial committee of *Precedent*.

PHONE (08) 8235 7420

EMAIL Leanne.Larosa@finlaysons.com.au